LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 138

WILLIAM MURPHY AND JOHN MOODY, SR.,
PETITIONERS,

vs.

THE WATERFRONT COMMISSION OF
NEW YORK HARBOR.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR CERTIORARI FILED MAY 17, 1963
CERTIORARI GRANTED OCTOBER 14, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 138

WILLIAM MURPHY AND JOHN MOODY, SR.,
PETITIONERS,

vs.

THE WATERFRONT COMMISSION OF
NEW YORK HARBOR.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

INDEX

	Original	Print
Record from the Superior Court of New Jersey, Appellate Division, Docket Nos. 263-61 and 264-61		
Appendix to appellants' brief consisting of portions of the record from the Superior Court of New Jersey, Law Division, Hudson County	1	1
Order to show cause	1	1
Motion of Waterfront Commission to punish John Moody, Sr. for Contempt, etc.	3	3
Exhibit E (Excerpts from)—Testimony of William Murphy before Representatives of Waterfront Commission, October 3, 1961	17	14
Exhibit F (Excerpts from)—Testimony of John Moody, Sr. before Representatives of Waterfront Commission, October 3, 1961	40	33
Exhibit G (Excerpts from)—Decision of Hon. Joseph L. Smith, J.S.C., October 4, 1961	53	44

RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 18, 1963

	Original	Print
Appendix to appellants' brief consisting of portions of the record from the Superior Court of New Jersey, Law Division, Hudson County—Continued		
Motion of Waterfront Commission to punish John Moody, Sr. for Contempt, etc.—Continued		
Exhibit H—Order of Hon. Joseph L. Smith, J.S.C., dated October 4, 1961	55	46
Exhibit I (Excerpts from)—Testimony of William Murphy before "Designees" of Waterfront Commission, October 27, 1961	57	47
Exhibit J (Excerpts from)—Testimony of John Moody, Sr., before "Designees" of Waterfront Commission, October 27, 1961	92	72
Excerpts from Exhibits introduced by Waterfront Commission in proceedings of October 27, 1961 before "Designees" of said Commission	104	83
Exhibit 1—Letter dated October 13, 1961	104	83
Exhibit 5—Letters dated October 10, 1961 and October 23, 1961	105	84
Exhibit 6—Letter dated October 18, 1961	109	87
Exhibit 7—Letter dated October 25, 1961	110	88
Exhibit 8—Letter dated October 26, 1961	111	89
Defendants' answer to motions for contempt	112	90
Defendants' notice of motion for bill of particulars	115	93
Defendants' request for jury trial	120	97
Excerpts from testimony of November 21 and 22, 1961	121	98
Appearances	121	98
Colloquy re motions	121	98
Argument re Immunity by Mr. Krieger	149	101
Colloquy	162	108
Arguments on motion to hold defendants in Civil and Criminal contempt by:	166	109
Mr. Malchman	166	109
Mr. Krieger	170	111
Argument on motion of defendants for jury trial by Mr. Krieger	175	112
Colloquy	183	117

	Original	Print
Appendix to appellants' brief consisting of portions of the record from the Superior Court of New Jersey, Law Division, Hudson County—Continued		
Excerpts from testimony of November 21 and 22, 1961—Continued		
Testimony of William Murphy—		
direct	184	118
cross	187	121
redirect	201	132
John Moody—		
direct	201	133
cross	204	135
Colloquy	209	140
Oral decision of November 22, 1961	213	143
Defendants' motion to quash subpoenas, etc.	237	165
Affidavit of Robert H. Wall in support of motion	239	167
Excerpts from sentence proceedings	242	169
Appearances	242	169
Excerpts from proceedings to settle terms of order, December 4, 1961	249	175
Judgment re John Moody, Sr., December 4, 1961	250	176
Judgment re William Murphy, December 4, 1961	253	179
Notice of appeal re John Moody, Sr.	258	183
Notice of appeal re William Murphy	258	184
Excerpts from brief for appellants, William Murphy and John Moody, Sr. on prior appeal	259	185
Statement of facts	260	185
Excerpts from appendix to brief for appellants, William Murphy and John Moody, Sr. on prior appeal	262	186
Proceedings before the Waterfront Commission of New York Harbor, May 19, 1960	263	187
Appearances	263	187
Testimony of John Moody, Sr.	264	187
Affidavit of John Moody, Sr.	276	197
Answering statement and affidavit of William Murphy	277	198
Proceedings before the Waterfront Commission of New York Harbor, May 19, 1960	280	200
Appearances	280	200
Testimony of William Murphy	281	201

	Original	Print
Proceedings in the Supreme Court of New Jersey	295	212
Order for certification	295	212
Opinion, Proctor, J.	296	213
Mandate on modification	325	241
Clerk's certificate (omitted in printing)	326	241
Order allowing certiorari	327	242
Order granting motion of respondent to require certification of additional parts of record	328	242

IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket Nos. 263-61 and A-264-61

Civil Actions (On Contempt).

On Appeal from Judgments of the Superior Court of New Jersey, Law Division—Hudson County.

Sat.Below: Smith, J.S.C.

In the Matter of the Application

of

WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish JOHN MOODY, SR. for failure to obey a Subpoena.

In the Matter of the Application

of

WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

Appendix to Appellants' Brief

[fol. 1]

IN THE SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—HUDSON COUNTY

Docket No. L-4258-61

Civil Action

In the Matter

of

the Application of the WATERFRONT COMMISSION OF NEW YORK HARBOR to Punish JOHN MOODY, SR. for Failure to Obey a Subpoena.

ORDER TO SHOW CAUSE—Filed November 1, 1961

The matter being opened to the Court by motion made by Robert A. Pin, Esq., attorney for the Waterfront Com-

mission of New York Harbor, an instrumentality of the States of New York and New Jersey, to punish John Moody, Sr. as for a contempt of court for his failure to obey a lawful subpoena duly issued and duly served upon him by the Waterfront Commission of New York Harbor, and it appearing to the Court from the motion of Robert A. Pin, and the affidavit of William P. Sirignano, filed herewith, that a lawful subpoena was duly issued by the Waterfront Commission of New York Harbor and duly served on said John Moody, Sr., commanding him to appear at the offices of the Waterfront Commission of New York Harbor, 15 Park Row, [fol. 2] City, County and State of New York, on the 18th day of May, 1960, to testify as a witness and that said John Moody, Sr., failed and refused to obey the command of such subpoena in that he wilfully refused, without justification, to give testimony pursuant to such subpoena on the duly adjourned return date thereof, and that an order to show cause should issue, pursuant to R. R. 4:46-5(c), requiring said John Moody, Sr., to show cause before this Court why he should not be punished as for a contempt of court.

It is this 1st day of November, 1961,

Ordered, that John Moody, Sr., appear in person and show cause before this Court at the Courthouse of Jersey City, New Jersey, on the 3rd day of November, 1961 at 9:30 in the forenoon, or as soon thereafter as counsel may be heard, why he should not be punished as for a contempt of court; and

It is Further Ordered, the service of a copy of this order and of the motion and supporting affidavit certified to be true copies shall be made personally upon the said John Moody, Sr. on or before the 1st day of November, 1961. Service of the within order may be made by duly authorized investigator of said Waterfront Commission of New York Harbor.

Peter P. Artoserse, A. J. S. C.

Dated: 1st day of November, 1961.

[fol. 3]

IN THE SUPERIOR COURT OF NEW JERSEY

MOTION OF WATERFRONT COMMISSION TO PUNISH JOHN MOODY, SR., FOR CONTEMPT, ETC.—Filed November 1, 1961

To the Honorable Judge of the Superior Court, Law Division, Hudson County, State of New Jersey:

The Waterfront Commission of New York Harbor (hereinafter called the Commission) moves the Court, pursuant to R. R. 4:46-5(c), to punish John Moody, Sr., home address 1111 Washington Street, Hoboken, New Jersey, as for a contempt of court for failure to obey a lawful subpoena issued by the Commission for the following reasons:

1. The Commission was created by the Waterfront Commission Act, which was passed by the States of New Jersey and New York, as a body corporate and politic, to eliminate evil conditions and criminal and corrupt practices in the port of New York district [N. J. Laws 1953, c. 202, 203 (N. J. R. S. 32:23-1 et seq.)].

2. In the Fourth Report of the New York State Crime Commission [Leg. Doc. No. 70 (1953)], whose findings were concurred in by the New Jersey Law Enforcement Council [Report of the New Jersey Law Enforcement Council (1953)], and which led to the enactment of the Waterfront Commission Act by the States of New York and New Jersey, one of the evil conditions on the waterfront specifically enumerated by the Crime Commission was that known criminals were in control of important locals of the International Longshoremen's Association and of key waterfront areas [Fourth Report, pp. 23-25]. In this connection, the New York State Crime Commission found that criminal control of the ILA locals produced crime, that there were serious instances of extortion, that the financial affairs of most of [fol. 4] the ILA locals had been loosely and irresponsibly conducted, that the funds of the ILA locals were misused and their records destroyed and that the undemocratic procedures of the ILA locals helped to keep unscrupulous labor leaders in power [Fourth Report, pp. 25-32].

3. Another evil condition on the waterfront specifically enumerated by the Crime Commission was the use of the unlawful work stoppage as an instrument of coercion by the ILA [Fourth Report, p. 9]. Still another evil condition on the waterfront specifically enumerated by the Crime Commission was that the ILA controlled the Port Watchmen's Union; that the close connection between the watchmen's union and the ILA resulted in watchmen being discouraged from, and even reprimanded for, reporting thieves; and that the ILA actively opposed efforts by steamship companies to improve the watchmen system [Fourth Report, pp. 57-64].

4. In order to eliminate these evil conditions relating to port watchmen, the Waterfront Commission requires port watchmen to be licensed by the Waterfront Commission; separates the union from the port watchmen by forbidding the port watchmen to be members of a union representing longshoremen; and provides that a port watchman's license will not be granted or may be revoked if the Commission is not satisfied with the good character and integrity of the port watchman [Waterfront Commission Act, Part I, Article X; N. J. R. S. 32:23-39 et seq.].

5. In order to execute the mandate of the Waterfront Commission Act that it eliminate the evil conditions found to have existed on the waterfront, the Waterfront Commission is clothed with broad investigatory powers. Thus, the Waterfront Commission Act provides:

[fol. 5]

"ARTICLE IV.

"General Powers of Commission

"In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power;

* * * * * * * * *

"8. By its members and its properly designated officers, agents and employees, to administer oaths and issue subpoenas throughout both states to compel

the attendance of witnesses and the giving of testimony and the production of other evidence;

* * * * * * *

"11. To make investigations, collect and compile information concerning waterfront practices generally within the port of New York district and upon all matters relating to the accomplishment of the objective of this compact;

* * * * * * *

"13. To make annual and other reports to the governors and legislatures of both states containing recommendations for the improvement of the conditions of waterfront labor within the port of New York district, for the alleviation of the evils described in Article I and for the effectuation of the purposes of this compact * * *." [Waterfront Commission Act, Part I, Article IV, Sections 8, 11, 13; N. J. R. S. 32:23-10.]

And further,

"'Witness' shall mean any person whose testimony is desired in any investigation, interview or other proceeding conducted by the commission pursuant to the provisions of this act." [Waterfront Commission Act, Part II, Section 5-a(4); N. J. R. S. 32:23-85.]

[fol. 6] 6. The American Export Lines, Inc., which leases and operates waterfront piers and a terminal in Hoboken, New Jersey, employed one James H. Markley to be its Chief Security Officer in the port of New York, including Hoboken. The employment of James H. Markley commenced May 16, 1960. Prior to the commencement of his employment with American Export Lines, James H. Markley was an investigator for the Waterfront Commission and his principal assignment was to cover said piers and terminal of American Export Lines, Inc. in Hoboken.

7. On Monday, May 16, 1960, when the employment of James H. Markley for American Export Lines commenced as aforesaid, Markley, pursuant to his duties, walked onto the piers of the American Export Lines in Hoboken. Thereupon, a work stoppage began of the longshoremen and

checkers employed by the American Export Lines in Hoboken. This work stoppage, except for the morning of Tuesday, May 17, 1960 continued through Friday, May 20, 1960. The work stoppage was in effect during the times that Markley, pursuant to his duties, was on the piers of the American Export Lines in Hoboken. Since May 20, 1960, when the work stoppage ended, Markley has not set foot on the piers of American Export Lines in Hoboken.

8. Under the Waterfront Commission Act, the longshoremen and checkers who are participating in this work stoppage are required to be and are registered by the Waterfront Commission. Also, under the Waterfront Commission Act, James H. Markley, as Chief Security Officer of American Export Lines, must be and is licensed by the Waterfront Commission as a port watchman.

9. The Waterfront Commission has information that this work stoppage was a concerted effort to keep James H. [fol. 7] Markley off the piers of the American Export Lines in Hoboken, New Jersey. Accordingly, in order to determine whether this work stoppage constituted an illegal coercion of an employer (the American Export Lines) to compel such employer to limit the functions of, or to discharge, a licensed port watchman (James H. Markley) and to further determine whether any persons registered or licensed by the Waterfront Commission were participating in such illegal coercion, the Commission instituted the instant investigation.

10. In connection with such investigation, subpoenas of the Commission were duly served on May 18, 1960, on William Murphy, business agent of Local 2 of the ILA, representing longshoremen in Hoboken, New Jersey, and upon John Moody, Sr., organizer for the ILA in the State of New Jersey. (Copies of the subpoenas served upon Murphy and Moody, together with annexed affidavits of service, are annexed hereto as "Exhibit A" and "Exhibit B," respectively.) Both Murphy and Moody appeared at the offices of the Commission in response to these subpoenas on the afternoon of May 19, 1960.

11. Moody, after giving his name and address, testified that he was a union official and refused to answer any other questions. Murphy testified that he was a business agent of Local No. 2 and represented members of his local working the American Export Piers in Hoboken. He stated that he knew the pier did not work on Monday [May 16, 1960] and that it was common knowledge for the previous ten days that things were not normal at Piers A, B, and C, Hoboken [American Export Lines Piers]. Murphy then refused to answer whether this condition was related to the appointment of Markley as Chief Security Officer and refused to answer any further questions.

[fol. 8] 12. The reasons for the refusal of Murphy and Moody to testify, insofar as can be discerned, comprised the following grounds: (1) the work stoppage was a matter which the Commission had no statutory authority to investigate; (2) the work stoppage was a matter over which the National Labor Relations Board had exclusive jurisdiction; (3) the Commission had no right to investigate the work stoppage since civil litigation may ensue as a result thereof (i.e., the American Export Lines had threatened to sue the ILA); and (4) the Commission's investigation sought to inquire into privileged communications between union and management and/or between union representatives. Neither Moody nor Murphy asserted the privilege against self-incrimination although both were specifically asked if that was one of the grounds for their refusal to testify.

13. Thereupon, the Commission instituted contempt proceedings against Murphy and Moody in the Superior Court of New Jersey, Hudson County (Smith, *J. S. C.*), which, by judgment dated June 20, 1960, adjudged Murphy and Moody guilty of civil contempt and ordered that they be fined $50 each and that they be incarcerated until they obeyed the Commissioner's subpoenas. The judgment of contempt against Murphy and Moody was affirmed by the Supreme Court of New Jersey by mandate dated May 22, 1961. See *Application of Waterfront Commission of New York Harbor*, 35 N. J. 62 (1961). (A copy of the printed record upon the appeal of Murphy and Moody is annexed as "Exhibit C" and a copy of the mandate of Supreme Court as "Exhibit D.")

14. Thereupon, Murphy and Moody appealed to the Supreme Court of the United States and applied to the Supreme Court of New Jersey for a stay pending such appeal, which application was denied by the Supreme Court of New Jersey on August 14, 1961. Appellants then applied to Mr. [fol. 9] Justice Brennan of the United States Supreme Court for a stay pending appeal, which application was denied by Mr. Justice Brennan. Appellants then applied to Mr. Justice Brennan for reconsideration of his denial of a stay and for oral argument in connection with such application. This second application was also denied by Mr. Justice Brennan on September 29, 1961. (The Commission has moved to dismiss appellants' appeal to the Supreme Court of the United States, which motion is now pending. In any event, as appears more fully hereinbelow, the appeal has become moot by virtue of the subsequent proceedings herein.)

15. Finally, after affirmance of their contempt judgment by the Supreme Court of New Jersey and after all applications for stays had been denied, Murphy and Moody appeared before Judge Smith of the Superior Court, Hudson County, New Jersey, on October 3, 1961 pursuant to the mandate of the Supreme Court of New Jersey. Judge Smith directed that Murphy and Moody appear at the offices of the Commission pursuant to the Commission's subpoenas. Murphy and Moody did appear at the offices of the Commission on October 3, 1961 as directed by Judge Smith. However, except to give their names, addresses and occupations, Murphy and Moody again refused to answer all questions, this time upon a myriad of entirely new objections including the privilege against self-incrimination. All of these new and multifarious objections were overruled except the privilege of self-incrimination. The subpoenas were adjourned until October 10, 1961 in order to give the Commission an opportunity to determine whether to grant Murphy and Moody immunity from prosecution pursuant to the provisions of Section 5-b(5) of the Waterfront Commission Act (N. J. R. S. 32:23-86) and, if so, to afford the Commission an opportunity to give the notice required by Section 5-b(5) to the appropriate officials. (Copies of the transcripts of the

[fol. 10] testimony of Murphy and Moody before the Commission on October 3, 1961 are annexed hereto as "Exhibit E" and "Exhibit F," respectively.) Said Section 5-b(5) of the Waterfront Commission Act provides as follows:

In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

"To confer immunity, in the following manner: In any investigation, interview or other proceeding conducted under oath by the commission or any duly authorized officer, employee or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and notwithstanding such refusal, an order is made upon twenty-four hours' prior written notice to the appropriate attorney general of the state of New York or the state of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section three of article III of this act, that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this subdivision, he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him as provided for herein.

"'Immunity' as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by the unanimous vote of both members of the commission or their designees [fol. 11] appointed pursuant to the provisions of section three of Article III of this act, he have answer or produce evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or fail-

ing to answer, or in producing or failing to produce evidence, in accordance with the order, and any such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

"Immunity shall not be conferred upon any person except in accordance with the provisions of this subdivision. If, after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate attorney general or district attorney or prosecutor having an official interest therein was not notified, such failure or neglect shall not deprive such person of any immunity otherwise properly conferred upon him."

16. On October 5, 1961, Murphy and Moody appeared again before Judge Smith of the Supreme Court, Hudson County, New Jersey, for the purpose of determining whether they had purged themselves of their contempt. It was the Commission's position that the proceedings were in an interim stage, that there had been no final obedience or disobedience of the Commission's subpoenas upon the remand at this point, and that Murphy and Moody should remain in constructive custody until their appearance before the Commission on the adjournment return date of the subpoenas on October 10, 1961. However, Judge Smith, by oral decision rendered from the bench (a copy of which is an- [fol. 12] nexed hereto as "Exhibit G"), held that Murphy and Moody had purged themselves of their contempt, but further made it explicitly clear that the Commission's subpoenas still remained in force and effect and that Murphy and Moody were still required to appear at the offices of the Commission on October 10, 1961. In compliance with his oral decision, Judge Smith signed an order dated October 4, 1961 purging Murphy and Moody of their contempt and also providing that Murphy and Moody should appear on the adjourned return date pursuant to the Commission's subpoena. (A copy of said order dated October 4, 1961 is annexed hereto as "Exhibit H.")

17. On October 27, 1961 (the duly adjourned return date of the Commission's subpoenas), Murphy and Moody appeared at the offices of the Commission. Pursuant to the provisions of Section 5-b(5) of the Waterfront Commission Act, Murphy and Moody were duly granted immunity from prosecution and directed to testify. Notwithstanding such grant of immunity from prosecution, Murphy and Moody again refused to testify upon multifarious grounds, one of which was the claimed unconstitutionality of Section 5-b-5 of the Waterfront Commission Act. (The transcripts of the testimony of Murphy and Moody on October 27, 1961, are annexed hereto as "Exhibit I" and "Exhibit J," respectively.)

18. Another of the numerous grounds asserted by Murphy and Moody for their refusal to testify was that they had not been apprised of the subject matter of the Commission's investigation. Apart from the fact that such objection was waived by the failure of Murphy and Moody to assert it in their original appearances before the Commission on May 19, 1960 as aforesaid, this objection is entirely disingenuous. For the fact is that, as appears from the record of the first [fol. 13] contempt proceedings (Exhibit C), both Murphy and Moody in said original appearances before the Commission were specifically advised as to the purpose of the investigation. Further, the opinion of the Supreme Court herein (35 N. J. 62) explicitly recites at length the subject matter of the Commission's investigation, which was held to be within the statutory investigatory authority of the Commission. What is more, in their Jurisdictional Statement filed in the Supreme Court of the United States, Murphy and Moody claim that they were not apprised of the purpose of the Commission's investigation until the Commission filed its papers in the Superior Court to have them adjudged guilty of contempt; in their words, the purpose of the Commission's investigation "made its first appearance in the case in the [Commission's contempt] motion papers," (Jurisdictional Statement, p. 11). Hence, by their own argument in the Supreme Court of the United States, that they had not been informed of the subject matter of the Commission's investigation until the Commission filed its papers in Superior Court in the original contempt proceed-

ing herein. Murphy and Moody conceded that at least by such time (over a year prior to their recent appearances at the Commission in October, 1961) they had been sufficiently informed respecting the subject matter of the Commission's investigation.

19. Section 1 of Article XIV of the Waterfront Commission Act provides as follows:

> "The failure of any witness, when duly subpoenaed to attend, give testimony or produce other evidence, whether or not at a hearing, shall be punishable by the superior court in New Jersey and the supreme court in New York in the same manner as said failure is punishable by such court in a case herein pending" [N. J. R. S. 32:23-6].

[fol. 14] R. R. 4:46-5(c) provides as follows:

> "Where a statute provides that failure of a person to obey a subpoena or order of a public officer or administrative agency or a receiver, to testify, to answer a proper question, or to produce books, papers, documents or tangible things, or that misconduct on the part of a person attending a hearing, shall be punishable by the court in the same manner as like failure or misconduct is punishable in a case pending in the court, the matter shall be brought before the court by motion supported by affidavit stating the circumstances. Upon the motion the court may issue an order to show cause, returnable in not less than 2 nor more than 10 days, requiring the person to show cause before the court why he should not be punished; or the court may issue an attachment. If the court determines that the failure or misconduct above mentioned was without justification, it may punish him as for a contempt of court."

20. Almost a year and a half has expired since the Commission's subpoenas were first served on Murphy and Moody. The validity of the Commission's investigation has already been litigated through the Supreme Court of New Jersey. However, the Commission has yet to receive any

testimony whatever from Murphy and Moody. Rather, the Commission is compelled to institute these second contempt proceedings and embark on a new round of litigation because of the refusal of Murphy and Moody to testify upon multifarious grounds that are entirely spurious and disingenuous. It is submitted that Murphy and Moody have been wilfully contumacious and that they simply refused to testify for no better reason than that they do not wish to do so.

[fol. 15] Wherefore, the Waterfront Commission of New York Harbor respectfully requests:

1. That this Court issue an order to show cause directing John Moody, Sr., to appear before this Court at a time to be fixed by the Court and then and there to show cause why he should not be punished as for a civil and criminal contempt of court for failure to obey a subpoena duly served upon him.

2. That said John Moody, Sr., be punished as for a civil and criminal contempt of court.

3. That the Commission be granted such other and further relief as to this Court may seem just and proper.

Robert A. Pin, Attorney for the Waterfront Commission of New York Harbor, 60 Hudson Street, Hoboken, New Jersey.

(Verified by William P. Sirignano on November 1, 1961.)

[fol. 17]

IN THE SUPERIOR COURT OF NEW JERSEY

EXCERPTS FROM EXHIBIT "E" TO MOTION OF WATERFRONT COMMISSION. (TESTIMONY OF WILLIAM MURPHY BEFORE REPRESENTATIVES OF WATERFRONT COMMISSION, OCTOBER 3, 1961.)

WATERFRONT COMMISSION OF
NEW YORK HARBOR

Proceeding in the Matter of an
Investigation Under Article IV of the
Waterfront Commission Compact

15 Park Row,
New York, New York.

October 3, 1961,
11:30 A. M.

Appearances:

For the Commission:

ANTHONY L. PIAZZA, Esq., Assistant Counsel.

IRVING MALCHMAN, Assistant to General Counsel.

Witness:

WILLIAM MURPHY, 218 Roosevelt Avenue, Union City, New Jersey.

Attorneys for Witness:

HAROLD KRIEGER, Esq., 921 Bergen Avenue, Jersey City, New Jersey.

ROBERT H. WALL, Esq., 880 Bergen Avenue, Jersey City, New Jersey.

Present:

JOHN MOODY, 1111 Washington Street, Hoboken, New Jersey.

DUNCAN GRIFFITH, 132 Nassau Street, New York, New York.

Mr. Piazza: This is an investigation under Article IV of the Waterfront Commission Compact.

. . . . . .

[fol. 18] Mr. Piazza: On the record.

Mr. Krieger: For the purpose of the record, we are here in response to an original subpoena issued by the Waterfront Commission, and we are here further in accordance with the direction of the judge of the Superior Court of the State of New Jersey, namely, Judge Smith, and entered into a stipulation in the court this morning on behalf of the individual now appearing, namely, William Murphy that we will voluntarily appear here prior to the effect of any warrant in response to your subpoena. However, so that we know what we are appearing for, I now request that you produce an order of the Waterfront Commission directing this investigation and I assume that you must have a written order to that effect by the Waterfront Commission of this investigation, and I ask you now for an opportunity to read it so that we know the purpose and pertinency and extent of this investigation.

Mr. Piazza: Mr. Krieger, this Commission has ordered this investigation in order to inquire into the factual background of the work stoppage that took place on May 16, 1960 and through the 20th at Piers A, B and C in Hoboken, to inquire whether or not a violation of the Compact took place. I shall produce no order other than my own statement at this time concerning my authority to conduct this inquiry.

Mr. Krieger: Mr. Piazza, I am not questioning the fact that you are an employee of the Waterfront Commission. Let me indicate it for the purpose of the record; nor am I asking you for the authority by the Waterfront Commission to have a hearing of this nature at the moment.

Mr. Piazza: It is an investigation.

Mr. Krieger: All right, investigation, but I am, at this time, requesting the order by the Waterfront Commission directing that such an investigation be had and held; also the purposes for which such investigation is to be had and [fol. 19] the pertinency. Might I, at this time, point out that the Commission is an accusatory agency expressly claiming that its function is to deal with commissions of crimes by individuals. This makes the Commission a combination of a grand jury and a punitive tribunal; and I think this is further borne out by the fact of a statement made by Mr. Piazza when we first noted our appearance that there may be, in

view of certain facts, some conflict of interest between counsel, and I think that bears out the point most forcibly —more forcibly than I can possibly bring it to fore. If the purpose and pertinency and all the other full appraisals are not made so that Murphy here does not know—is not apprised and his counsel representing him is not apprised of the pertinency and purpose then, of course, he is being denied due process of law. It is well known that serious disadvantages, both legal and social, is attached to a person who is not fully apprised of the purposes of an investigation; and in the exercise of constitutional rights and due process of law, a person in an action of this nature has a constitutional right as well as statutory of being apprised of the pertinency and purpose; as this individual, brought into an investigation of this nature has a right to be confronted with any specific charges, if there are any, names of witnesses who may be called or who may have any information in support of such charges and a confrontation.

Mr. Piazza: It is not a hearing, Mr. Krieger. This is merely an investigative interview—

Mr. Krieger: I am not saying—

Mr. Piazza: (Cont.)—under oath. That's all it is and we are going to proceed. I have taken notice of your objection and I overrule it.

Mr. Krieger: Mr. Piazza, I am not saying—call it by any name you want to call it. I don't know what your distinction between investigation and hearing may be—but I assume any investigation must be based upon some basis of a purpose. This agency has no such broad powers—

[fol. 20] Mr. Piazza: I have already announced the purpose.

Mr. Krieger: Let me finish—this agency has no such broad powers and, especially, is this agency greater than the Congress of the United States of America or any grand jury that may be impanelled by either the Federal Government or State Government, to give it such broad powers of investigation to evade rights of people especially if it is done legally and constitutionally. This agency, like any other governmental body is bound and has a duty, might I say, a duty to witnesses such as Murphy here to apprise them fully in accordance with the decisions of the United States Su-

preme Court, as well as our State Courts of the purpose and pertinency of an investigation. Now, I've asked at the outset for an order, if any exists, for such an investigation by the Commission. I have not been informed that there is such an order or has been such an order entered by the Commission for this investigation; and as far as the purpose of this, it hasn't been fully set forth, nor the pertinency of calling at this time Murphy for a witness for investigation. Now, I respectfully make these requests of you, Mr. Examiner, as you have called yourself, and I feel that we have a constitutional right and statutory right on behalf of this individual for such information.

Mr. Piazza: I have already—

Mr. Krieger: A denial of it constitutes a denial of due process of law and, of course, under the circumstances, it is a violation of law as well as constitutional rights.

Mr. Piazza: Is that your statement, sir?

Mr. Krieger: Yes.

Mr. Wall: May I supplement that statement briefly.

Mr. Piazza: Go ahead.

Mr. Wall: In substantiation of the statement made by Judge Krieger, I cite the case of Scull v. Virginia, 359 U. S., page 344, 79 Supreme Court, page 738; and also the case of Watkins v. the United States, 178 Supreme Court—

Mr. Piazza: 78 Supreme Court.

[fol. 21] Mr. Wall: 78 Supreme Court, page 1173, wherein the following principle is upheld:

"Unless the subject matter has been made to appear with indisputable clarity, it is the duty of the investigative body upon objection of the witness on the grounds of pertinency to state for the record the subject matter under inquiry at that time and the manner in which the propounded questions are pertinent thereto."

Mr. Piazza: I have also stated the subject matter and the inquiry and I shall now proceed.

Mr. Krieger: May I state for the purpose of the record, of course, in compliance with an order of the court, we have no alternative but to appear here and to remain until we are excused by you, of course. The record will indicate that

there has been no response to the requests made by counsel for Murphy.

. . . . . .

WILLIAM MURPHY, residing at 218 Roosevelt Avenue, Union City, New Jersey, appearing as a witness, having been duly sworn, testified as follows:

By Mr. Piazza:

. . . . . .

Mr. Piazza: I want to make it clear for the record, then, that although I have sworn him again, this is a continuation on the same subpoena that was issued for which you had to appear on May 19, 1960.

Mr. Wall: Let me ask you this: You are going through the same questions and answers you have already?

Mr. Piazza: We may go through some of the same questions for which we have no answer.

. . . . . .

Q. What is your position, Mr. Murphy?

A. Business agent, Local 2.

[fol. 22] Q. At the International Longshoremen's Association? Is that correct?

A. That's right.

Mr. Wall: Yes.

Q. And as such business agent, what are your duties, Mr. Murphy?

Mr. Krieger: At this time, in view of the refusal of the Waterfront Commission to fully apprise this individual so that we can determine rationally whether to invoke self-incrimination is to force this individual to invoke a privilege in the dark and is forcing this individual to incur a disadvantage in that there has been a denial of due process of law here and, under the circumstances, not knowing where such questions could possibly lead, not knowing the purpose and pertinency nor the objects that are intended, this individual has no alternative but to invoke the privilege which has come about as a result of the Commission denying this individual due process of law. The privilege of self-

incrimination is invoked under expressed protest, the protest being based upon due process of law and the clauses of the 14th and 5th Amendments of the United States Constitution, as well as the statutory provisions in the Constitution of the State of New Jersey, and under these circumstances, the witness will now answer the question invoking his privilege.

Mr. Piazza: Read the question again, Mr. Reporter.

(Question read back.)

Q. Answer that question.

A. On advice of counsel I stand on my constitutional rights.

Q. By that do you mean your constitutional privilege against self-incrimination?

A. Yeah.

[fol. 23] Mr. Krieger: As well as the 14th Amendment of the United States Constitution and the due process and statutory provisions that I have outlined.

Q. Mr. Murphy, when did you first become aware that on May 16, 1960, a work stoppage had taken place at Piers A, B and C, Hoboken, the American Export Line Terminal?

Mr. Krieger: In view of the fact that this Commission in itself has heretofore in other proceedings indicated that a conspiracy had taken place in which William Murphy was a party thereto, and William Murphy being the same individual as appears here, and it appears in the charge as well as another proceeding making such statement and assertion by the Commission itself, and in view of the fact that the Commission has refused to fully apprise this individual of the purpose and pertinency of any specific charges, refused to confront this individual with witnesses or names of witnesses to support those charges, refused to state the connection of any with the questions involved, therefore, this witness has no alternative, despite its desire not to do so, but because of the denial of due process of law, because of the denial of the rights guaranteed by the Constitution of the United States under the 14th Amendment, to invoke the privilege of self-incrimination and it is done under ex-

pressed protest, the protest being based upon the denials I have outlined.

Q. Mr. Murphy, will you please answer the question.

A. On advice of counsel I will stand on my constitutional rights.

Q. By that do you mean the privilege of self-incrimination?

A. I answered yes.

[fol. 24] Mr. Krieger: The privilege of self-incrimination as well as the 14th Amendment and other amendments of the constitutional statutory—

Q. In other words, you refuse to answer on the grounds stated by your counsel? Is that correct, Mr. Murphy?

Mr. Krieger: He didn't refuse; he exercises his constitutional rights.

Q. You are invoking the privilege on self-incrimination?

Mr. Krieger: Right.

Q. Is that correct?
A. Yes, right.

Mr. Krieger: As well as due process of law.

Mr. Piazza: Are you going to raise this particular objection to every one of my succeeding questions?

Mr. Krieger: Yes.

Mr. Piazza: Then for the record I will just ask the question and he stands on his constitutional prerogatives. I don't like the record to be cluttered with that whole spiel every time. I would like to get this over with.

Mr. Krieger: I don't know whether I will have to interject it every time. I will try not to. As far as you now stipulate that the reasons heretofore—

Mr. Piazza: I am not stipulating. If you are going to raise that objection which you have just phrased, if that is going to be the one. I will just ask my question and it is understood that your objection is in the record to that question. Is that right?

Mr. Wall: Why don't you put it on the record that all the questions you might ask will receive the same answer.

Mr. Piazza: That is perfectly all right.

[fol. 25] Mr. Wall: It will expedite the whole thing.

Mr. Piazza: Let me ask the questions so that we will know what the questions are.

* * * * * * *

Q. Did you have any conversations, Mr. Murphy, with union officials of the ILA prior to May 16, 1960 concerning the presence of one James Markley on Piers A, B and C as a security officer for the American Export Lines?

Mr. Krieger: I object to the question and this improves upon the original statements made by me that it is necessary to have purpose and pertinency. It is indicated now by the line of questioning that one leads into another, and now this individual is being deprived of due process of law by not being given the purpose and pertinency, as well as any specific charges, as well as names of witnesses and all other factors that an individual is entitled to in such matters of this nature, that it constitutes a deprivation of due process of law, and although this individual does so with great temerity and a desire to avoid the exercise of his constitutional privilege, he has no alternative but to do so under these circumstances; and the exercise of the constitutional privilege of self-incrimination is done under great and expressed protest because of the denial under due process of law in this instance.

Q. Mr. Murphy, will you answer the question.

A. On advice of counsel I stand on my constitutional rights.

Q. In other words, you are invoking your constitutional privilege against self-incrimination? Is that correct, Mr. Murphy?

A. That's right.

* * * * * * *

Mr. Krieger: You are saying, one, he is exercising all the constitutional rights that he may have, not limited to only one.

[fol. 26] Mr. Piazza: You may have others, but I recognize the constitutional privilege against self-incrimination as being valid in a proceeding of this nature.

Mr. Wall: Plus all the statements made by Harold Krieger are included—

Mr. Piazza: In the grounds.

Mr. Wall: In the grounds.

Mr. Piazza: That is all right, except I thought we weren't going to repeat it.

Mr. Krieger: Sometimes the question has a little different angle.

Q. Did you have any conversations with the officials of American Export Line on May 16, 1960, May 17, 1960, May 18, 1960, May 19, 1960, and May 20, 1960, concerning the presence of James Markley as a security officer on Piers A, B and C, Hoboken?

Mr. Krieger: Again, when I say this, Mr. Piazza, we now come to names of individuals. There's nothing indicated here to pertinency. There's nothing indicated here as to purpose and, again, I don't want to—as you before agreed—to repeat everything I said before; but I say, under all these circumstances, a witness such as Mr. Murphy here is compelled to exercise a privilege and must do so in the dark because he is not fully apprised and for all the other reasons. You said for the purpose of this record, you say in this instance it is the same as repeated here, but he does so in great protest because he has no alternative but to exercise the privilege.

A. I take the constitutional rights.

Q. You are invoking the self-incrimination privilege?

A. That's right.

Mr. Krieger: As well as the other grounds.

[fol. 27] Q. Mr. Murphy, did you at any time during the period covered by the dates May 16th to May 20th, 1960 appear on the terminal or in the offices of the terminal at Piers A, B and C, Hoboken, in connection with the work stoppage that resulted on the days May 16th to May 20th?

Mr. Krieger: May I just point out at this time my objection, and as you have indicated, I don't want to encumber the record. You asked me not to do so. You said you would

accept it as the same objection in this answer. Everything I said to the other questions would be considered to have been repeated herein. May I again repeat the exercise in this answer by self-incrimination by this individual is done under great protest with due regard and respect for this Commission, as well as the laws of this Country and the denial of due process in this instance, compels all of us under these circumstances to exercise self-incrimination, as well as the Constitution of the State of New Jersey, 14th and 5th Amendments.

Mr. Wall: I object to the question on the grounds it is too broad and not specific.

Mr. Piazza: I overrule the objection.

Mr. Wall: I know.

Q. Will you answer the question?

A. On advice of counsel I stand on my constitutional rights.

Q. By that do you mean you are invoking your constitutional privilege against self-incrimination as well as the other grounds stated by your counsel? Is that correct?

A. That's right.

Q. Mr. Murphy, did you at any time prior to May 16th, 1960, speak with one Michael McNamara, Hiring Agent at the American Export Line Piers, concerning the presence of James Markley as a security officer on those particular piers?

Mr. Krieger: Again, for the purpose of the record, I repeat what I said heretofore without encumbering this [fol. 28] record, which I am trying to avoid. Mr. Piazza, I think you will agree with me. I repeat again fully what has been said heretofore and I add thereto the following: Heretofore, the Waterfront Commission—I don't know whether you know this; Judge Wall—had formally made an accusation that Michael McNamara, Frank Rump and others, together with William Murphy and John Moody, did wrongfully, did wrongfully attempt by means of a work stoppage to coerce and, in fact, they did coerce with the man who appears here, William Murphy; and who is the William Murphy. Again, I say, in view of that statement heretofore made by the Waterfront Commission in formal

papers that are presently in the possession of the Waterfront Commission, have been issued publicly by the Waterfront Commission and, as well as the public relations issued by the Waterfront Commission to that same effect—made by the Waterfront Commission to that same effect, and a failure of the Waterfront Commission to, one, issue its order for this type of investigation and indicating this investigation, further, failure to give it purpose and pertinency and, further, even to mention here in these proceedings at this time referring to what appears to be one and the same instance that appears in the others, again, I say the witness has no alternative under these circumstances because of the denial of due process of law to invoke the privilege—of the constitutional privilege of self-incrimination and due process of law of the United States as well as the State of New Jersey. I assume this will go for the State of New York, if there is a question of our being here, it's only a matter of investigation of the State of New Jersey. It is only an arm of the State of New Jersey being present in this room.

[fol. 29] Mr. Piazza: Mr. Krieger, as I have previously stated, I recognize the invocation of the constitutional privilege of self-incrimination.

Mr. Krieger: I know you do. I am very happy you are living up to the Constitution.

Mr. Piazza: However, I don't recognize any other ground that you have stated.

Mr. Krieger: I didn't expect you would.

* * * * * * *

Mr. Piazza: I overrule the rest of them. I do recognize the ground against self-incrimination. Then I direct Mr. Murphy to answer the question.

Mr. Krieger: He will answer that—it is stated in the record, the statement I made about the issue by the Waterfront Commission of the public statement, as well as public releases accusing William Murphy of the offense indicated by me. You admit such a publication had been made by the Waterfront Commission?

Mr. Piazza: If you are referring to the issuance of a notice of hearing, wherein Mr. Murphy was named as an

actor in concert with certain others in a work stoppage, such a document was issued by the Commission and—

Mr. Krieger: And also public releases about such a stoppage and such an active part being played by Mr. Murphy?

Mr. Piazza: Since I had no part in any releases, I am not prepared to indicate what happened with respect to any release. May I ask you this: I don't see any more relevancy—

Mr. Krieger: I want the pertinency.

Mr. Piazza: There is no pertinency involved.

Mr. Wall: He said no pertinency involved.

Mr. Piazza: The pertinency was stated by me when I said at the beginning that this inquiry concerned a work stoppage that took place on May 16th to May 20th on Piers A, B and C, Hoboken.

[fol. 30] Mr. Krieger: Is that the same instance that I have referred to?

Mr. Piazza: Yes, it is the same incident, the notice of hearing against McNamara. That is the one you are talking about?

Mr. Krieger: There was a notice of hearing against McNamara and others. There was a newspaper issue released by the Waterfront and it appeared in all the outstanding papers in New Jersey. Headlines of publication by your public relations man employed by this Commission.

Q. Will you answer the question, Mr. Murphy?

A. On advice of counsel I stand on my constitutional rights.

Q. By that, I take it, you mean you stand on your constitutional privilege against self-incrimination and the other grounds which I overruled which were stated by your counsel?

A. That's right.

Mr. Piazza: All right, Mr. Krieger and Mr. Murphy and Mr. Wall, since you are taking this position, which is your prerogative, any other questions that I might ask will receive the same answer; is that correct?

Mr. Krieger: Yes. Any question of the same subject matter relating to the same subject matter as indicated herein that could possibly involve incriminating himself, he would exercise and enforce his privilege as indicated by me and he will follow due course as far as constitutional rights.

Mr. Piazza: All right. So, therefore, let the record be clear that I am now terminating this particular interview for today since the counsel for Mr. Murphy informed me that to any further questions concerning this episode at the American Export Line Piers on May 16, 1960, namely, the work stoppage that occurred there will receive the same [fol. 31] answer, that is to say, the constitutional prerogatives would be invoked—

Mr. Krieger: Let me make the statement for myself.

Mr. Piazza: (Continuing) —therefore, I now adjourn—

Mr. Krieger: Let the record indicate this:—

Mr. Piazza: You want to make a—

Mr. Krieger: Mr. Murphy will exercise whatever constitutional rights he may have in response to any question that would possibly require an exercise of his constitutional rights as I have indicated. He is here prepared to answer any question that may have been propounded to him, and will do so with due regard to constitutional right. His answer thereto will be considered. He has a privilege and right to exercise constitutional rights and you would recognize constitutional rights being invoked.

Mr. Piazza: Do you have anything to say, Mr. Wall?

Mr. Krieger: I still have.

Mr. Piazza: Close the record at this time. I want to—you are going to appear again in court?

Mr. Krieger: We are going to appear tomorrow morning in court, that's correct.

Mr. Wall: 9:30. We have been ordered by the court.

Mr. Krieger: We will only be gone an hour or so, as far as that is concerned. What is your point, Mr. Piazza?

Mr. Piazza: Then I will close the interview for today and adjourn it until the 10th of October, 1961.

Mr. Krieger: So that the record is clear, number one, we are here today in response to a subpoena; we are here today in response to an order of the court; we are here

today so that there can be no question of our desire to [fol. 32] answer any and all questions that may be propounded—that may be propounded—and that is what we are here for, voluntarily appearing to stay here as long as you may require to answer any question, but we are not here to agree to an adjournment on that which we were supposed to complete today for the purpose of this record.

Mr. Piazza: Let me explain, Mr. Krieger. I am adjourning this subpoena to the 10th for this reason: That since Mr. Murphy chooses—which is his privilege—to invoke his constitutional prerogative against self-incrimination, we will take up the matter with the appropriate—the Commission will take up the matter with the appropriate District Attorney and may confer immunity on Mr. Murphy.

* * * * * * * *

Mr. Krieger: Yes, sir.

Do I understand that the reason why you are adjourning it is to see whether or not you can get immunity for this individual, to determine whether or not such immunity can be secured?

Mr. Piazza: No, no. Let me explain it to you, Mr. Krieger. Under the law we have the right—

Mr. Krieger: I know what the statute says.

Mr. Piazza: —to give immunity.

Mr. Krieger: You have no right to give any immunity in the State of New Jersey.

Mr. Piazza: Yes, we do.

Mr. Krieger: No, you have no such right. You have no such right to grant such immunity in the State of New Jersey. My good friend, the man beside you will indicate—

Mr. Malchman: Mr. Krieger—

Mr. Krieger: I am aware of the section of the statute.

[fol. 33] Mr. Malchman: The State of New Jersey, as well as the State of New York, has enacted Section 5-B5 of the Waterfront Commission Act empowering the Commission to confer immunity in the manner prescribed in that section. That section, as I said, was enacted by the Legislature of New Jersey, as well as by New York. That immunity section requires the Commission to give 24 hours prior writ-

ten notice to the appropriate Attorney General of the State of New York or the State of New Jersey.

Mr. Krieger: Does it say Attorney General, State of New Jersey?

Mr. Malchman: Yes.

Mr. Krieger: Specifically?

Mr. Malchman: "and to the appropriate District Attorney or Prosecutor having an interest therein." In order to consider whether or not to grant immunity pursuant to this explicit section and in order to give the appropriate notice of immunity, if it is decided to give immunity to the described officials, this proceeding, as Mr. Piazza said, is continued until October 10th.

Mr. Krieger: Mr. Malchman, with all due deference to you and your ability as an attorney, and as an appellate lawyer, which I respect, as you know, even though the Supreme Court may not have gone along with you too well, we are here today for the specific purpose—we are here in response to the court's direction. If you have any action in the future, that is a matter to be considered in the future. When we are through today, we are through to go back in the court tomorrow and say this man has responded; what, if anything, you may do in the future is something that we can cross the bridge when we come to it. Until such time, I don't think it is fair, nor is it fair on your part to tie this [fol. 34] matter in with some other matter that you may contemplate doing in the future. We are here for a specific purpose and limited to that purpose. I can assure you this: that if, in the future, you have a desire to have this man present for any purpose—within your jurisdiction—he will be voluntarily present. It won't be necessary to issue processes of your subpoena but, as far as this proceeding is concerned, as far as this instance is concerned, as far as this purpose is concerned, it has been served. What you may do in the future, between now and the 10th, or what you may decide in the future, that is entirely up to you. I don't even want to know about it. You don't tell me anything. You follow a—

Mr. Malchman: Mr. Krieger, you may take any position you want. This subpoena is being continued for the purposes that I have indicated, namely, the Commission is

going to determine whether it wishes to confer immunity upon this witness, and if it does make that decision to give the appropriate notice required by statute—

Mr. Krieger: Mr. Malchman,—

Mr. Malchman: May I finish my statement:

Mr. Krieger: Yes. I'm sorry. I don't want to interrupt you.

Mr. Malchman: —For that purpose, this investigation is being adjourned. It is being continued pursuant to the same subpoena until 10:00 o'clock, October 10th.

Mr. Krieger: Mr. Malchman, for the purpose of the record, do you agree that we have complied with the order of the court and the subject matter that was before the court? Have we complied in that respect fully? And if you don't agree, we will stay here until you do. We are ready to [fol. 35] answer any questions you may have. If there is any question—

Mr. Malchman: Mr. Krieger,—

Mr. Krieger: Wait a minute. Robert, call Judge Smith on the telephone now. We are here to answer any question you may propound. We don't want to go to court tomorrow and for you to say we have not complied with an order.

Mr. Malchman: The order of the court is that the subpoena be complied with and that testimony be given pursuant to the subpoena. Now, Mr. Murphy has taken his privilege. He has not yet testified. The subpoena is being adjourned for the purpose of determining whether or not we wish to confer immunity. There has been no final compliance with the subpoena, no final obedience to the subpoena. Until the Commission makes that determination—

Mr. Krieger: My friend, Mr. Malchman, do I understand from you that there might be no compliance with the subpoena here? Do I understand my sitting here doesn't exist? Do I understand Murphy's sitting here doesn't exist? Do I understand that there is no compliance with the subpoena if the individual answers the question, and the answer given is that he exercises constitutional rights and privileges? Isn't that an answer? Hasn't that been construed and determined to be an answer? Of course, it's an answer. Now, if you say for one moment that he is not answering all the questions in accordance with his constitutional rights, I

want that stated now and we will call Judge Smith up but, I don't want to leave this room with any impression that he hasn't complied with the order of the court. I don't want you to appear tomorrow and say he hasn't complied with the order of the court because I am here for the purpose of complying with the order of the court.

[fol. 36] Mr. Piazza: Does this mean you are in fear that we will take the position you are still in contempt?

Mr. Krieger: Right.

Mr. Piazza: I want a question raised in that respect—

Mr. Malchman: The witness is still under the subpoena and we expect him to return pursuant to the subpoena.

Mr. Krieger: I don't recognize that subpoena after today.

Mr. Malchman: I thought you wanted additional—

Mr. Krieger: I am here today and I will not recognize that subpoena. I will appear voluntarily on any date fixed. I will appear with another subpoena, but for that subpoena we are here for that purpose. We are here for that purpose. We are actually here to answer that subpoena fully. I want to know from you, Mr. Examiner, is there any further questioning that you have at this time?

Mr. Piazza: No.

Mr. Krieger: All right, that's all I want to know.

Mr. Piazza: You are excused, Mr. Murphy.

Mr. Krieger: And he has complied with your—

Mr. Piazza: He has invoked the constitutional privilege which I recognize as self-incrimination. Now, the subpoena is adjourned in order that we might consider the immunity question, that's all, to the 10th.

Mr. Krieger: I don't think that is—

Mr. Piazza: Your position is clear.

Mr. Krieger: Our position is clear and we are here.

Mr. Piazza: Our position is clear.

[fol. 37] Mr. Krieger: I don't like this hocus pocus in between cloak-and-dagger-type proposition. We are here, completely here voluntarily, as we told the court, and the court recognized we are going over voluntarily. We are complying and there is no question about our compliance. Mr. Piazza recognized our right to invoke the constitutional privilege, which was done when it became necessary to do so. If there was any violation of law it was by the Water-

front on due process of law. I say this to Mr. Piazza and his associate, if they, at any other time, want to see Mr. Murphy, he will be made available to them. If they at any time want to question Mr. Murphy he will be made available for any purpose in accordance with law and his constitutional rights. That's all.

Mr. Piazza: Close this interview.

(12:30 P.M.)

[fol. 38]

IN THE SUPERIOR COURT OF NEW JERSEY

EXCERPTS FROM EXHIBIT "F" TO MOTION OF WATERFRONT COMMISSION. (TESTIMONY OF JOHN MOODY, SR., BEFORE REPRESENTATIVES OF WATERFRONT COMMISSION, OCTOBER 3, 1961.)

WATERFRONT COMMISSION OF
NEW YORK HARBOR

Proceeding in the Matter of
an Investigation Under Article IV of
the Waterfront Commission Compact

15 Park Row,
New York, New York.

October 3, 1961,
12:40 P.M.

Appearances:

For the Commission:
ANTHONY L. PIAZZA, Esq., Assistant Counsel.

IRVING MALCHMAN, Esq., Assistant to the General Counsel.

Witness:
JOHN MOODY, SR., 1111 Washington Street, Hoboken, New Jersey.

Attorneys for Witness:
HAROLD KRIEGER, Esq., 921 Bergen Avenue, Jersey City, New Jersey.

ROBERT H. WALL, Esq., 880 Bergen Avenue, Jersey City, New Jersey.

Present:

DUNCAN GRIFFITH, 132 Nassau Street, New York, New York.

Mr. Piazza: Investigation under Article IV of the Waterfront Commission Compact.

* * * * * * * *

[fol. 39] Mr. Krieger: May I for the purpose of the record ask whether or not you have an Order by the Commission setting forth the purpose of this investigation?

Mr. Piazza: For the record, let me state that this interview on the record concerns a work stoppage that took place on May 16th through May 20, 1960 at Piers A, B and C, in Hoboken, American Export Line Terminal. And that we are inquiring into the factual background of that work stoppage. And in that connection we are now interrogating Mr. Moody, who is here pursuant to subpoena and to the mandate of the court in New Jersey.

Mr. Krieger: Now, in view of the statement made by Counsel and the failure to produce an Order of the Commission for such an investigation, I assume, Mr. Piazza, that no such Order has been made by the Commission.

Mr. Piazza: I don't feel that I am required to answer that particular question. We are authorized to conduct this matter and that's as far as I can go.

Mr. Krieger: I ask you directly: Has an Order been made or entered by the Commission at any time prior to the issuance of this subpoena or prior to the date?

Mr. Piazza: Mr. Krieger, my answer stands as I said it.

Mr. Krieger: You refuse to advise Counsel or the witness that an Order or lack of Order has been made by the Commission for such an investigation?

Mr. Piazza: The matter was ordered by the Commission and that's as far as I can go.

Mr. Krieger: Have you such an authorization?

Mr. Piazza: I don't have to demonstrate such an authority.

Mr. Krieger: I would like to examine the Order of Investigation in this instance—

Mr. Piazza: I am sorry.

Mr. Krieger: (Continuing) as to pertinency and purposes.

[fol. 40] Mr. Piazza: I have already indicated the scope of the inquiry and I am not ready to proceed.

* * * * * * *

JOHN MOODY, SR., residing at 1111 Washington St., Hoboken, New Jersey, appearing as a witness, having been duly sworn, testified as follows:

Mr. Piazza: Let the record reflect that this is a new interview but under the subpoena that was issued and on which Mr. Moody appeared on May 19th, 1960.

By Mr. Piazza:

Q. Would you give your name and address to the reporter.

A. John E. Moody, 1111 Washington Street, Hoboken, New Jersey.

* * * * * * *

Mr. Krieger: I might say at this time, I desire the presence of one of the Commissioners of the Waterfront Commission. I would like to have him make certain statements for the record. Due to the fact that this is an ordered investigation, I assume, although there has been no statements made to the effect by Mr. Piazza, although I have asked him to make such statements, and he refused to do so, I would like to examine or have statements made by the Commission itself or the Commissioners as to the purpose and pertinency of this investigation, and whether or not they have issued an Order; or in the alternative that the clerk or the Secretary of the Commission appear here for the purpose of producing such a statement.

Mr. Piazza: The record will hold your request. I deny it.

[fol. 41] Q. Mr. Moody, would you give your position, please?

A. I am an organizer of the I. L. A. in the State of New Jersey.

Q. In that position and in respect to that position, what are your duties, Mr. Moody?

Mr. Krieger: And for the purpose of the record, I object to the question in that there has been a failure to produce any Order of the Commission here, there is a failure to state the purpose of this investigation, the pertinency of this question and further, that I have asked for such purpose and pertinency and now I ask you for the purpose and pertinency of the statement, detail the specific charges that may concern this individual, also the names of any witnesses to support such charges and a confrontation with such witnesses. I make these requests on the grounds of due process of law and the right of a fair hearing and examination. I am pointing out that the Commission is an accusatory agency expressly claiming that its function is to deal with commissions of crime by individuals. This makes the Commission a combination of a Grand Jury and a punitive tribunal. And if the purpose and pertinency and all the other full appraisals above described have not been made, then Moody is forced under these circumstances to make a choice on whether or not to invoke privileges guaranteed by the Constitution and that force in a setting that denies him due process of law. That being so, there are serious disadvantages that he is placed in both legal and social, which attach to a person who is compelled to invoke the privilege of self incrimination. It constitutes a denial of due process of law to force this man to choose to invoke, at such a disadvantage the privilege for self incrimination. The Waterfront Commission, by refusing to give us full ap- [fol. 42] prisal from which we would be able to determine rationally whether we need to invoke self incrimination, in forcing us to invoke a privilege in the dark, and is forcing us to incur the disadvantages above mentioned in the dark, which is to state, without due process of law. And, therefore, under the circumstances this witness must invoke the privilege of self incrimination under protest. The protest, once again, that such invoking of privilege has come about as a result of the Commission's denying and denial of due process of law. Self incrimination privileges are invoked under great protest and express protest, protest being both upon the due process clause of the 14 and Fifth Amendments of the United States Constitution and statu-

tory provisions of the States of New York and New Jersey, and particularly the State of New York, as well as the constitutional provisions of the States involved.

Mr. Piazza: Mr. Krieger, let me state again, that we are inquiring into the possible violations of the Compact in connection with a work stoppage that took place on May 16th through May 20th at Piers A, B and C in Hoboken. And to that end we are requesting Mr. Moody to testify here today.

Mr. Krieger: May I point out for the purpose of the record that the Commission heretofore has made affirmative statements of a public nature in which the Commission did affirmatively state that this individual, namely John Moody, has been involved in conspiracy with others to perform certain acts which may be determined to be legally, in that they have alleged that coercion and force was used by this individual with others to bring about an act which they contend to be illegal in both formal papers filed as well as public utterances made by the Commission through its representatives.

Mr. Piazza: Mr. Krieger, let me first state, in the Notice of Hearing you are referring, no conspiracy was alleged; [fol. 43] and secondly, I overrule all objections save the objection of the invocation of the privilege of self incrimination, and, therefore, I direct Mr. Moody to answer the question.

Mr. Krieger: So there can be no question about it, the Commission has stated in public and in formal papers filed by the Commission that this individual, John Moody, did with others coerce, force, and did in fact act with others to perform certain acts and that that constitutes, as I think all recognize, when it's alleged that he did in concert with others force and do certain acts. It constitutes a conspiracy when he acted in concert there. So your word of "conspiracy" or your use of the word is a conclusion, because the facts stated by the Commission constitute such, in that it's alleged that he did act in concert with others to do these acts that they complained of, as illegal acts.

Mr. Piazza: I am directing Mr. Moody to answer.

Mr. Wall: Let me clarify for the record as far as this situation is concerned. We cite the case of Scull versus

Virginia 359 U. S. page 344, 79 Supreme Court, page 738; we also cite the case of Watkins versus United States 77 Supreme Court, page 1173, wherein this principle was upheld. "Unless the subject matter has been made to appear with indisputable clarity, it is the duty of the investigative body, upon objection of the witness on the ground of pertinency, to state for the record the subject matter under inquiry at that time and in the manner in which the propounded questions were pertinent thereto."

Mr. Krieger: Let me further add that—Mr. Wall, if I may—in view of the fact there is a failure to state pertinency, in view of the fact there is a failure to state purpose, in view of the fact that there is a failure to produce an Order here, in view of the fact that questions arise as [fol. 44] to whether or not the Commission under these circumstances even has jurisdiction, statutory or otherwise, and in view of the fact that the action of the Commission in this instance may be out of bounds of its jurisdiction, in view of the fact that the allegations made herein pertain to evidently a labor matter which is presently the subject matter before the United States Supreme Court, and in view of the fact that the United States Supreme Court is now called upon to determine whether or not to admit an appeal or issue a writ of certiorari, in view of the fact that the Waterfront Commission has filed a brief in which the Waterfront Commission has asked that the matter be dismissed because of the question of jurisdiction in preservation of all the rights—in view of the fact we have no alternative but to exercise certain constitutional rights and exercise due process of law so that all of the issues can be properly preserved, we are arguing and setting forth these points in the record, so that the United States Court, if it becomes necessary, will be fully apprised of anything that happens here, or any other court which has contempt jurisdiction.

Mr. Piazza: What's the point of your statement? Are they being set forth as grounds for invoking the constitutional privilege of self incrimination?

Mr. Krieger: As well as due process of law.

Mr. Piazza: I overrule everything except the invocation, except the privilege against self-incrimination.

Mr. Krieger: And let the record indicate that we are here in response to a subpoena and let the record indicate that we are here in response to the court—Superior Court of the State of New Jersey, so there be no question of the [fol. 45] individual's presence here for the purpose of answering your questions in that respect, and limited to that respect.

Q. Mr. Moody, I direct you to answer the question concerning your duties. What are your duties as organizer of the I. L. A.?

A. On advice of counsel I stand on my constitutional grounds.

Q. By that you mean you are invoking your constitutional privilege against self-incrimination as well as the other grounds which I overruled?

A. That's right.

Q. Mr. Moody, would you tell us when you first became aware of labor trouble at Piers A, B and C in Hoboken on or about May 16—during the period covered from May 16, 1960, through May 20, 1961?

Mr. Krieger: Mr. Piazza would you at this time stipulate the reason heretofore given covering the purpose of this question as well as to try to save time.

Mr. Piazza: Sure.

Mr. Krieger: May I also indicate at this time the necessity and reason why I urge that there be a full disclosure of pertinency and that there has been a failure to do so and, therefore, I urge that as an additional ground, and this question is indicative of the failure of the purpose of setting forth purpose and pertinency as well as other reasons heretofore given.

Mr. Piazza: As I previously stated, I overrule all grounds except the invocation of the privilege against self-incrimination.

Q. Would you answer the question?

A. On advice of counsel I stand on my constitutional grounds.

Q. By that you mean that you are invoking your constitutional privilege against self-incrimination as well as other grounds which were overruled by me?

A. Yes.

* * * * * * *

[fol. 46] Q. Mr. Moody, with respect to the work stoppage that occurred on May 16th, 1960, at Piers A, B and C in Hoboken, did you have any conversations with any of the union officials about the presence of one, James Markley, as a security officer on the said terminal?

Mr. Krieger: Of course, my objection is noted here and again the question of pertinency; and, again, now it points out to my request heretofore of the disclosure being made as to names, witnesses, times and places as well confrontation of any charges or anything.

Mr. Piazza: I overrule all objections save the invocation of the privilege of self-incrimination.

Q. Mr. Moody, I direct you to answer.

A. On advice of counsel I stand on my constitutional rights.

Q. By that you mean that you invoke your privilege against self-incrimination as well as the other grounds that I overruled; is that correct?

A. That's correct.

Q. Mr. Moody, did you have any conversations covering the work stoppage that occurred on May 16th, 1960 with officials of American Export Line, specifically Leland Andrews or others, such as Captain Blackledge, concerning the presence of James Markley on the terminal as a security officer?

Mr. Krieger: Again I might say so that there can be no question about all the reasons heretofore given—are acknowledged as reasons now for the witness's rights for the exercise of his constitutional right—and might I restate that a great and express protest that this witness is being compelled to exercise his constitutional privilege in that there is an evident denial of due process of law.

Mr. Piazza: I refuse all grounds except the invocation of the privilege of self-incrimination.

[fol. 47] Q. I direct you to answer.

A. On advice of counsel I stand on my constitutional rights.

Q. And by that I take it you mean you invoke your privilege against self-incrimination as well as the grounds I overruled?

A. That's right.

Mr. Krieger: You recognize the right of his use of his privilege of the constitution?

Mr. Piazza: I did recognize that.

Mr. Malchman: Notwithstanding the fact that it was probably waived.

Q. Mr. Moody, were you physically present at Piers A, B and C, in Hoboken, on May 16, 17, 18 and 19 or 20th, 1960?

Mr. Krieger: Again, for the purpose of the record, whatever I have said heretofore by way of objection and reasons and requests made, are again repeated at this point without necessity of repeating them fully and as well as requests for a disclosure, are again repeated in this instance.

Mr. Piazza: I overrule all except the invocation of the privilege against self-incrimination.

Q. I direct you to answer, Mr. Moody.

A. On advice of counsel I stand on my constitutional rights.

Q. By that I take it you mean you are invoking the privilege against self-incrimination?

Mr. Wall: And all the others.

Q. And all the others which I have overruled?

A. Yes.

Q. Mr. Moody, did you have any conversations with Michael McNamara on May 16th, 17th, 18th, 19th or 20th, 1960, concerning the presence of Markley, James Markley, a security officer on the Hoboken Terminal?

Mr. Krieger: Again, for the purpose of the record, all the reasons heretofore given are again repeated; again, [fol. 48] the pertinency is not indicated here and the record does not indicate the purpose or the reasons therefore.

Q. I direct you to answer. I overrule all objections except the invocation of the—

A. On advice of counsel I stand on my constitutional right.

Q. I take it you mean the privilege against self-incrimination as well as other grounds which I have overruled?

A. That's right.

Q. Mr. Moody, did you ever meet with any of the executives of American Export Lines with respect to the settlement of the dispute concerning Markley's presence as a security officer on Piers A, B and C in Hoboken?

Mr. Krieger: Again, for the purpose of the record, whatever I have said before is repeated fully and again I make a request for the expression of pertinency and for this examination to state pertinency or purpose.

Mr. Piazza: Well, I deny all requests and I overrule all your objections except the invocation of the privilege.

Q. I direct you to answer.

Mr. Krieger: And secondly, confrontation of witnesses is repeated here.

Q. I direct you to answer.

A. On advice of counsel I stand on my constitutional rights.

Q. By that, I take it, you are invoking the privilege against self-incrimination as well as all other grounds stated by counsel which I overruled; is that right?

A. That's right.

Q. Did you ever speak to Michael McNamara prior to May 16th, 1960, concerning the presence of James Markley as a security officer on Piers A, B and C, Hoboken?

Mr. Krieger: Again, for the purpose of the record, all the things which I have said heretofore, objections made, [fol. 49] requests made for exhibition of purpose, demonstration, of pertinency, witnesses, confrontration of the witnesses as well as now, so that there be no question about it, to determine the jurisdiction of whether or not the Commission has jurisdiction for these purposes. All those reasons—

Mr. Piazza: I overrule all except the invocation of the privilege.

A. On advice of counsel I stand on my constitutional rights.

Q. You invoke the privilege of self-incrimination; is that correct?

A. Yes.

Q. Now, Mr. Moody, did you at any time issue orders for a work stoppage on Piers A, B and C, Hoboken, because of the presence of James Markley on Piers A, B and C?

Mr. Krieger: Again, for the purpose of the record, all objections heretofore stated are repeated, as by agreement, and I say again, not only that, but the question of jurisdiction becomes quite apparent and it becomes evident, and this witness under great protest, and express protest must use self-incrimination, and abuse therefore is being based upon a denial of due process of law in this instance and all rights and denial of rights contracted by the 14th and Fifth Amendments of the Constitution as well as all the statutory provisions.

Mr. Piazza: I overrule all the objections except the invocation of the privilege of self-incrimination.

A. On advice of counsel I stand on my constitutional rights.

Q. It take it by that you are invoking the privilege of self-incrimination as well as the other grounds which I have overruled?

A. That's right.

Q. Mr. Moody, have you since May 16th, 1960, issued any instructions concerning work stoppages either commencing or stopping the stoppage at Piers A, B and C, Hoboken?

[fol. 50] Mr. Krieger: Again, for the purpose of the record, I repeat for the purpose of the record all the things we have heretofore said by stipulation. It is not necessary to detail all the other objections and statements, requests heretofore made for pertinency, purpose as well as specific charges, if any, and the support of the statements, names of witnesses and confrontation; again I repeat this witness must under express and great protest use and exercise constitutional rights, and deprivation of due process of law.

Mr. Piazza: I overrule all the objections except the invocation of the privilege of self-incrimination.

Q. I direct you to answer.

A. On advice of counsel I stand on my constitutional rights.

Q. By that I take it you invoke the privilege against self-incrimination as well as the other grounds which I overruled; is that right?

A. That's right.

Mr. Piazza: Mr. Wall, Mr. Krieger and Mr. Moody, to all other questions that I will ask concerning this particular matter under investigation, I will receive the same answer that you have already given; is that correct?

Mr. Krieger: No. I would like to say, so that there could be no question about it, that this man is prepared to answer any and all questions you may put to him. That's what he is here for today.

Mr. Piazza: But you will invoke the privilege?

Mr. Krieger: Wherever it becomes necessary for him to do so and for the other reasons given, he will exercise whatever rights he may have.

Mr. Piazza: I am going to continue to ask him questions concerning this particular episode. So to those questions will you continue to invoke the same privilege?

[fol. 51] Mr. Krieger: We are here to answer all the same questions and he is here for that purpose and will answer all questions, and will exercise constitutional rights wherever the same becomes necessary to do so.

Mr. Piazza: In other words, if I ask more questions concerning the May 16th through the May 20th work stoppage you will continue to invoke the privilege?

Mr. Krieger: Wherever it becomes necessary to do so.

Mr. Piazza: Where won't it become necessary to do so?

Mr. Krieger: I don't know. You tell me. I don't know your purpose and pertinency yet.

Mr. Piazza: I have already explained it, Mr. Krieger. At this point I will conclude this interview and issue instructions to Mr. Moody to return on May 10th. I am adjourning this subpoena to October 10th, 1961 at ten A. M., in order that we may give appropriate notice to the district attorneys involved for the conferral of immunity to Mr. Moody. That's all.

Mr. Malchman: If the Commission decides to give him.

Mr. Piazza: Of course.

Mr. Krieger: So the record is clear, this man is here to answer any and all questions. He appeared voluntarily

too. He complied with the Order of the court. I don't want any questions raised as to that.

Mr. Piazza: If he didn't he would be held in contempt. It's my understanding that the man may plead the constitutional privilege. There is no question about it. If he deems it might incriminate him.

Mr. Wall: Let me state for the record that I take a general exception to the rulings of Mr. Piazza in this record or the other record and we also state we have fully complied with the Order of the Court.

[fol. 52] Mr. Krieger: The Judgment of the Superior Court is that the subpoena be obeyed and performed.

Mr. Malchman: At this time there has been no final obeyance or disobeyance, no final obedience or disobedience of the subpoena which is being adjourned.

Mr. Krieger: We are here to answer all questions, so there is no question raised that we weren't here or this wasn't terminated by reason of the actions of the Commission. We are here to answer. If there are any further questions, we are here to answer them. I don't want any statements saying we have not responded; and I think a person has a right to exercise constitutional rights. That constitutes an answer too. And we are here for that purpose, Mr. Piazza. I don't want any hocus pocus underneath the table offered as statement of fact by you or anybody else of the Commission. We are here for that purpose and I don't want—I want it understood here that we are here for that purpose. And I don't want any misunderstandings or misstatements made.

Mr. Piazza: Mr. Krieger, it's quite clear you may invoke the privilege. I have stated that for the record.

Mr. Krieger: I know what you have stated and I know what I have stated.

Mr. Piazza: In justification of my adjourning this matter until the 10th, the subpoena until the 10th, for the purpose of immunity, I am instructing him to appear.

Mr. Krieger: We will appear on that when it comes.

Mr. Wall: We are objecting to that continuance.

Mr. Krieger: We are excused now?

Mr. Piazza: Yes.

(1:05 P. M.)

[fol. 53]

IN THE SUPERIOR COURT OF NEW JERSEY

EXCERPTS FROM EXHIBIT "G" TO MOTION OF WATERFRONT COMMISSION (DECISION OF HON. JOSEPH L. SMITH, J. S. C., OCTOBER 4, 1961)

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—HUDSON COUNTY

Docket Number L-14077-59

IN THE MATTER

of

the Application of the WATERFRONT COMMISSION OF NEW YORK HARBOR to punish WILLIAM MURPHY for failure to obey a Subpoena.

IN THE MATTER

of

the Application of the WATERFRONT COMMISSION OF NEW YORK HARBOR to punish JOHN MOODY, SR., for failure to obey a Subpoena.

Jersey City, N. J.
October 4, 1961.

Before:

HON. JOSEPH L. SMITH, *J. S. C.*

APPEARANCES:

ROBERT A. PIN, Esq.,
For the Waterfront Commission of New York Harbor.

ROBERT H. WALL, Esq.,
For the Defendant Murphy.

MESSRS. KRIEGER & CHODASH,
By: HAROLD KRIEGER, Esq.
For the Defendant Moody.

[fol. 54] The Court: The Court has heard the argument on the question now presented to the Court as to whether or not these defendants have purged themselves of the contempt on which they have previously been found guilty.

This Court is satisfied that they have purged themselves of that contempt. They have obeyed the subpoena, appeared for examination, they have been examined by the Commission, and the record of the transcript of the testimony, as read to this Court, which is a part of this record, indicates that their refusal to answer was recognized as a proper ground and legal basis for their so refusing to answer those particular questions, as the record then stood, namely, on the basis of their constitutional right that it might tend to incriminate them. The Examiner so states many, many times in the record that has been presented to me. The fine has been paid.

I find that the subpoena is still effective. The subpoena, itself, is still effective. It has been adjourned. The subpoena, itself, is returnable—adjourned until October 10th. That is still a date that they must appear, and counsel agrees on the record that they will appear. Mr. Krieger says that they will appear when it comes, referring to October 10th.

Mr. Wall, do you so agree, too?

. . . . . .

Mr. Wall: Yes, sir.

The Court: So they will appear in answer to that subpoena. What is done then under this statute of immunity is entirely separate and apart from what this Court and the appellate courts have already passed upon. It is not a part of this proceeding and, therefore, an order may be presented accordingly. Show it to your adversary.

. . . . . .

[fol. 55]

IN THE SUPERIOR COURT OF NEW JERSEY

EXHIBIT "H" TO MOTION OF WATERFRONT COMMISSION (ORDER OF HON. JOSEPH L. SMITH, J. S. C., OCTOBER 4, 1961)

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—HUDSON COUNTY

Docket No. L-14078-59

IN THE MATTER

of

the Application of the WATERFRONT COMMISSION OF NEW YORK HARBOR,

Plaintiff,

versus

WILLIAM MURPHY and JOHN MOODY,

Defendants.

This matter coming on before the Court in the presence of counsel for the Waterfront Commission and counsel for the defendants, and it appearing to the Court that on the 3rd day of October 1961 the said defendants, namely William Murphy and John Moody appeared before the Waterfront Commission in response to the subpoena issued by the Waterfront Commission and pursuant to the order of this Court, and did comply with the order of this Court and have purged themselves of contempt.

[fol. 56] It is on this 4th day of October, 1961 ordered that the Warrant for arrest heretofore issued by this Court be and the same is hereby withdrawn and for nothing holden.

And this Court further finds and determines that the said defendants have purged themselves of contempt and the sentence confining the said defendants to a penal institution is hereby vacated and set aside and for nothing holden.

The defendants will appear on the adjourned date of the subpoena which is hereby made a part of this order.

JOSEPH L. SMITH,
J. S. C.

Consented as to form:

ROBERT A. PIN,
ROBERT H. WALL,
HAROLD KRIEGER.

[fol. 57]

IN THE SUPERIOR COURT OF NEW JERSEY

EXCERPTS FROM EXHIBIT "I" TO MOTION OF WATERFRONT COMMISSION (TESTIMONY OF WILLIAM MURPHY BEFORE "DESIGNEES" OF WATERFRONT COMMISSION, OCTOBER 27, 1961)

COMMISSION MEETING

RE: WILLIAM MURPHY

15 Park Row,
New York, New York.

October 27, 1961,
5:45 P.M.

Acting Commissioners:

MYLES J. AMBROSE, Executive Director.

WILLIAM P. SIRIGNANO, Esq., General Counsel.

Appearances:

For the Commission:

ANTHONY L. PIAZZA, Esq., Assistant Counsel.

ROBERT A. PIN, Esq., Assistant Counsel.

Witness:

WILLIAM MURPHY, 218 Roosevelt Avenue, Union City, New Jersey.

Attorneys for Witness:

HAROLD KRIEGER, Esq., 921 Bergen Avenue, Jersey City, New Jersey.

ROBERT WALL, Esq., 880 Bergen Avenue, Jersey City, New Jersey.

Present:

GEORGE A. MERKIEL, JR., Assistant to the Executive Director.

IRVING MALCHMAN, Esq., Assistant to the General Counsel.

[fol. 58] Mr. Ambrose: This is a regular scheduled meeting of the Waterfront Commission of New York Harbor, with Mr. Sirignano being designated as Deputy to Commissioner Thompson of the State of New Jersey, and myself being designated as Deputy to Commissioner Tyler of the State of New York.

The purpose of this meeting is to inquire into violations of the Compact in connection with a work stoppage in May, 1960, at the American Export Line piers in Hoboken, New Jersey.

. . . . . .

Mr. Piazza: Before I call Mr. Murphy to the stand, I would like to introduce into evidence the certified copies of the designations.

Have these marked.

(Designation authorizing Myles J. Ambrose to act in the place of Commissioner Harold R. Tyler, Jr., to confer immunity upon William Murphy marked Commission Exhibit 1 for identification.)

(Designation authorizing Myles J. Ambrose to act in place of Commissioner Harold R. Tyler, Jr., to confer immunity upon John Moody, Sr., marked Commission Exhibit Number 2 for identification.)

(Designation authorizing William P. Sirignano to act in the place of Commissioner David C. Thompson, to confer immunity upon William Murphy marked Commission Exhibit 3 for identification.)

(Designation authorizing William P. Sirignano to act in the place of Commissioner David C. Thompson, to confer immunity upon John Moody, Sr., marked Commission Exhibit 4 for identification.)

Mr. Piazza: I would also like to introduce the letters of notice pursuant to the statute which was sent to the ap-

[fol. 59] propriate Attorney Generals and District Attorneys of the States of New York and New Jersey.

(Letter dated October 10, 1961, to Honorable Lawrence A. Whipple, together with certification of service by mail; letter dated October 10, 1961, to Honorable David D. Furman, together with certification of service by mail; letter dated October 23, 1961, to Honorable Frank Hogan, together with certification of service by mail and letter dated October 24, 1961, to Honorable Louis Lefkowitz, together with certification of service by mail marked Commission Exhibit 5 for identification.)

* * * * * * *

[fol. 61] Mr. Krieger: * * * Under those circumstances, I call upon counsel to produce the original, or a certified copy of an order for a public hearing, and the purposes of such a public hearing so that we may have a proper record thereon. I desire that in that record, if there is such a record, there be stated in such a record the purpose and pertinency of this public hearing, the purpose of it, and in detail the specific charges, if any; the names of witnesses to support such charges; and confrontation of such witnesses to my client who appears here in this room. Otherwise, might I say this: It is our contention, at this time, that there is an entire denial of due process of law and right of fair hearing at this public hearing—or if you want to call it a trial. We don't know which it is at this point. It may be either one, or the other. I'd like to point out to this Commission that it now has become an accusatory agency, under the statute, and it expressly claims a right of such a function to deal with the commission of crimes by individuals. This makes this Commission, as presently constituted in [fol. 62] this hearing, a combination of a grand jury body and punitive tribunal and, therefore, we request that it be stated fully as a matter of record the purpose or pertinency and a full apprisal necessary, otherwise we are unable to properly advise our clients as to their constitutional rights and other rights they may have by reason of the statutes of such cases made and provided. It is also the question of proper due process of law. We are placed at a serious disadvantage, both from a legal viewpoint, and the client from

a legal and social viewpoint; and I am waiting now for the Commission's furnishing a determination by the Waterfront Commission of its purpose for holding of a public hearing and setting it forth fully for the purpose of the record.

Mr. Sirignano: Mr. Krieger, so we get the record in the proper perspective, it was merely stated at the outset that this is an investigation, and this investigation is being held in a public session. From that, you conclude this is a public hearing? That it is a trial? That there are charges and there are accusations? There are no such things. Your clients, Mr. Murphy and Mr. Moody appear here as witnesses in an investigation pursuant to a subpoena. Now, do you have such a subpoena, Mr. Piazza?

Mr. Piazza: The subpoena is in the court record.

Mr. Sirignano: And this is the adjournment date of that particular subpoena?

Mr. Piazza: Yes.

Mr. Sirignano: And this is the continuation of the investigation that was started sometime before; is that correct, Mr. Piazza?

Mr. Piazza: Yes, sir.

* * * * * * *

[fol. 63] Mr. Krieger: I asked for counsel to produce—and that is where you asked Mr. Wall if he had anything further—for the order of the Commission setting up the purposes and pertinency of this investigation, and we are entitled to have that under the case of Watkins v. United States, and all the other cases in which pertinency and the Commission's object thereof must be fully set forth and a determination made. We have nothing like that before us at all. We don't know the extent and we haven't the yardstick and how far this can go.

Mr. Sirignano: Mr. Krieger, this investigation, as you well know, being personally involved as counsel for the client herein, has a background of a year and a half. It has been litigated in all those courts. The court has found, in connection with this particular investigation, your clients were properly and fully advised as to the nature of this investigation.

Mr. Krieger: I disagree with you. The court never made such a finding in that respect because that point was never raised.

[fol. 64] Mr. Sirignano: We will proceed with the investigation.

Mr. Krieger: That point was never raised and that issue is still before the United States Supreme Court and not determined by them.

Mr. Wall: Pardon me just a moment, I have one more request.

Mr. Sirignano: Yes.

Mr. Wall: Can I note on the record your position with the Waterfront Commission? Are you General Counsel?

Mr. Sirignano: Yes, I am.

Mr. Wall: Mr. Sirignano is General Counsel.

May I, Mr. Ambrose, ask what your position is with the Waterfront Commission.

Mr. Ambrose: Executive Director.

* * * * * * *

Mr. Krieger: Mr. Sirignano, I made a demand for an instrument, that is always in an instrument form, where it is determined whether it be a Senate Investigation Committee, whether it be a grand jury or whether it be any other investigative body with authority to investigate, before an investigation could take place by any body there must be a determination of purpose; there must be a determination made, purposes and objects set forth therein so there would be the yardstick and limitation. Our courts have said that consistently. I have asked for all that and have not as yet received it.

Mr. Sirignano: Mr. Krieger, I think I have answered that question for the record and if you did not understand, I will do so again. This is the same investigation that was involved in litigation which went up from the Superior Court to the Appellate Division of the Supreme Court of the State of New Jersey. That investigation is now continuing and the Commissioners have designated Mr. Ambrose and myself to sit in their stead for the purpose of this investigation.

Mr. Krieger: I don't know what that means, Mr. Sirignano. That's the trouble with this investigation.

[fol. 65] Mr. Piazza: Pursuant to the statute.

Mr. Krieger: Are you going to submit such an instrument? Is there such an instrument in being or existence? Is there anything like that? I am asking that question of you.

Mr. Ambrose: I think we have ruled that the purposes of this investigation are clearly shown to both you and to your clients—

Mr. Krieger: No, they're not.

Mr. Ambrose: —to all concerned and, certainly, it is to the Commission and we will note your objection and we will proceed.

Mr. Krieger: Maybe I haven't made myself clear.

Mr. Ambrose: I think you made yourself clear.

Mr. Krieger: If you understand me, I asked is there such an order of determination made by the Waterfront Commission for such an investigation which sets forth objects and purposes. There either exists one or doesn't exist. If there isn't one, the Commission could have it clearly stated for the record so there is no question about it.

Mr. Ambrose: I don't think we have to answer the question under the circumstances.

Mr. Krieger: If you don't want to answer, that is your prerogative.

Mr. Ambrose: We will proceed, unless you have any other objections.

Mr. Krieger: Do I understand there is not or you will not answer?

Mr. Ambrose: I said your objections are noted for the record.

Mr. Krieger: It's not an objection, it's a request.

Mr. Ambrose: Your request is also noted for the record. I think it is satisfactorily answered by Mr. Sirignano, and now will you proceed.

Mr. Krieger: Let me indicate this: that I have asked for, arbitrary disposition made of it, no answer given as to [fol. 66] whether or not such an order exists by the Commission; no answer as to whether or not there is an order

available. There has been a refusal to produce one, and let the record so indicate. That's all.

. . . . . .

[fol. 68] Mr. Krieger: That question was determined by the court insofar as the preemption; by the preemption. The question I raised so far as pertinency and purposes was never set forth, was never argued properly. The record was never clear thereon. Was there a demand made to order at that time? None of those questions appeared on the record. None of those questions were properly argued. None of these questions appeared for the purpose of a determination by the Federal Court.

. . . . . .

[fol. 69] Mr. Ambrose: Do you have something else, Mr. Piazza?

Mr. Piazza: Yes. I'd like to proceed to October 10, 1961. A letter was addressed to the Honorable Lawrence A. Whipple, Prosecutor of Hudson County, Hudson County Court, Jersey City 6, New Jersey, wherein notice was given of this proceeding as required by our statute.

. . . . . .

Mr. Piazza: On October 10, 1961, the letter was addressed to the Honorable David D. Furman, Attorney General, State of New Jersey, Trenton, New Jersey, informing him of this proceeding.

Mr. Wall: The same letters?

Mr. Piazza: Practically the same letters.

. . . . . .

[fol. 70] Mr. Piazza: October 23, 1961, a similar letter was sent to the Honorable Frank Hogan, District Attorney of New York County, New York, informing him of this proceeding.

. . . . . .

Mr. Krieger: And I also make the same objections insofar as the letters themselves are concerned.

Mr. Ambrose: Your objections are noted. Proceed, Mr. Piazza, please.

Mr. Piazza: On October 24, 1961, a similar letter was sent to the Honorable Louis Lefkowitz, Attorney General, State of New York, Albany, New York, informing him of this proceeding.

Mr. Krieger: I make the same objection without repeating it in detail.

• • • • • • •

Mr. Ambrose: I take it then, these are three letters, three acknowledgments, one from Frank S. Hogan, District At-
[fol. 71] torney of the County of New York, State of New York; one from David D. Furman, Attorney General of the State of New Jersey; and one from Louis J. Lefkowitz, Attorney General of the State of New York, the only known acknowledgments at this point?

Mr. Piazza: Mr. Whipple.

Mr. Ambrose: What position?

Mr. Piazza: Prosecutor of Hudson County.

• • • • • • •

(Commission Exhibits 6, 7 and 8 for identification received and marked in evidence.)

Mr. Krieger: Note for the record that would be the only one that would have jurisdiction of the subject matter, in view of the statement made by Mr. Piazza. Hoboken, New Jersey is within the County of Hudson, State of New Jersey.

Mr. Ambrose: Your statement of law is noted for the record.

• • • • • • •

Mr. Piazza: This investigation concerns a work stoppage that occurred on the morning of May 16, 1960, at the Hoboken Terminal of the American Export Lines, Piers A, B and C, in Hoboken. And we are here to discover whether there are any violations of the Compact.

• • • • • • •

WILLIAM MURPHY, residing at 218 Roosevelt Street, Union City, New Jersey, appearing as a witness, having been previously sworn, testified further as follows:

By Mr. Piazza:

Q. Would you give your name and address, sir.

A. William Murphy, 218 Roosevelt Street, Union City, New Jersey.

Q. Are you an official of the ILA, Independent?

A. On the advice of counsel I stand on my constitutional rights.

[fol. 72] Mr. Krieger: I might say this for the purpose of the record, so there can be no question about this: I have heretofore asked for purpose and pertinency; I have heretofore asked for details and such. I respectfully contended that there has been a denial of due process of law. I respectfully contend that the Waterfront Commission, by refusing to give us full appraisal from which we would be able to determine rationally whether we need or whether this witness needs to invoke the privilege of self-incrimination, is forcing this witness and forcing counsel to suggest to the witness, so far as advice is concerned and his rights are concerned, to invoke a privilege in the dark and is forcing him to incur any disadvantages as a result of taking such constitutional rights as guaranteed to him because of his denial of due process of law. We respectfully contend that his requiring to take the constitutional privileges as guaranteed by the United States Constitution in the Statutes of the State of New Jersey is done under protest, protest being once again that such invoking of the privilege has come about as a result of the Commission's denial of due process of law. And I might repeat, the self-incrimination privilege is invoked under express protest, the protest being based upon the due process clause of the 14th and Fifth Amendments of the United States Constitution, as well as the Constitution of the State of New Jersey and the statutes in such cases as may be provided.

* * * * * * *

Mr. Ambrose: Mr. Krieger, would you mind waiting a minute, please.

Are you objecting to the answering of this question on the ground that any answer might possibly tend to incriminate you, Mr. Murphy.

[fol. 73] Mr. Murphy: I am refusing to answer on advice of counsel, that it may tend to incriminate me.

Mr. Piazza: Your Honors, I therefore respectfully request that this witness be given immunity and that he be directed to answer.

Mr. Ambrose: May I interrupt one second.

Mr. Murphy, will you continue to refuse to answer questions on the grounds of possible self-incrimination?

Mr. Krieger: Just a minute. That's an unfair question.

Mr. Ambrose: We will proceed.

Mr. Sirignano: Mr. Piazza, let's take this one step at a time, please.

Will you kindly read for the benefit of the witness, the statute which confers immunity and the manner in which it is conferred.

Mr. Piazza: All right, sir. In addition to the powers and duties elsewhere prescribed in this Compact, the Commission shall have the power to confer immunity in the following manner: In any investigation, interview or other proceeding conducted under oath by the Commission or any duly authorized officer, employee or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and notwithstanding such refusal, an order is made upon 24 hours' prior written notice to the appropriate Attorney General of the State of New York or the State of New Jersey, and to the appropriate District Attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the Commission or their designees appointed pursuant to the provisions of Section 3 of Article III of this Act, that such a person answer the question or produce the evidence, such person [fol. 74] shall comply with the order. If such person complies with the order, and if, but for this subdivision, he

would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him.

Mr. Sirignano: Mr. Murphy, Mr. Piazza has just read the statute which authorizes the Commission to grant immunity. Now, what that means in plain language is this: that you, as a witness, if a question is asked of you and you honestly believe the answer may incriminate you, you may plead that privilege and you do not have to answer the question; except that where the Commission orders you and directs you to answer that question, you must answer it. And you get this benefit from that direction: that any transaction concerning which you testify, you will be held immune from that and any answer you may give or evidence that you produce, cannot be used against you. Do you understand that?

Mr. Murphy: Yes.

Mr. Sirignano: That if you fail to answer after that direction you may be subjected to contempt, or if you answer truthfully you may be subjected to prosecution for perjury. Do you understand that?

* * * * * * *

Mr. Krieger: Do you represent, Mr. Sirignano, this witness sitting in the witness box that he cannot be subjected to any criminal proceedings of any kind and nature from either the State of New York or the State of New Jersey or by the Federal Government of the United States of America by reason of any answers that he may give after you give the so-called immunity that you speak about, that you make such a representation to this witness?

Mr. Sirignano: I make this representation, Mr. Krieger: [fol. 75] that any transaction concerning which he testifies or any evidence he gives or produces will not be used against him and he cannot be prosecuted for such transaction by the States of New York and New Jersey.

Mr. Krieger: Mr. Sirignano, do you make a representation to this witness that any testimony that he may give after this grant of so-called immunity that you say you possess to give, that his answers may not tend to incriminate him in the giving or getting of certain other evidence that could connect him with any other criminal offense?

Mr. Sirignano: I think—

Mr. Krieger: I now cite the case for your information—

Mr. Sirignano: I think I answered that when I said, to any transaction concerning which he testified, he will be immune from prosecution.

Mr. Krieger: When you say transaction, are you now referring specifically that this witness cannot be prosecuted as a result of a so-called work stoppage that took place in 1960 on the piers of the City of Hoboken, County of Hudson and State of New Jersey?

Mr. Sirignano: That's correct, sir.

Mr. Krieger: You make a representation to this witness that he cannot be prosecuted by the Federal Government?

Mr. Sirignano: I did not because no such representation can be made in giving immunity.

Mr. Krieger: You make no such representation?

Mr. Sirignano: Not by the Federal Government.

Mr. Krieger: Then we all understand each other.

Now, I ask Mr. Sirignano, under the statute have you such an order that you are now issuing, a written order on the question that was propounded to the witness?

Mr. Sirignano: We haven't given any order yet, Mr. Krieger.

[fol. 76] Mr. Piazza: The question that was pending, Your Honors, was whether this witness was an official of the ILA, I understand, to which he pleaded the Fifth Amendment, and I respectfully request that he be directed to answer.

Mr. Krieger: If Your Honor please, there is no statement that I have heretofore requested as to pertinency of the question of representation.

Mr. Ambrose: I think that objection has been carefully noted in the record.

Mr. Krieger: You think so and I hope that the court will think so.

Mr. Ambrose: The record is clear here and carefully noted and we all noted it.

Mr. Krieger: I hope the court will say it was noted. This is going to come to the courts. We might just as well understand each other now, not that we want to be antago-

nistic. There are very novel questions involved here. And we have attempted, very much so, and we have attempted by a motion that is returnable next Friday to have these issues as far as the constitutionality of this statute determined, so that there can be no question about our desire to cooperate.

Mr. Ambrose: Proceed, Mr. Piazza.

Mr. Piazza: I respectfully request that the witness be directed to answer.

Mr. Sirignano: Mr. Murphy, you are directed to answer the question.

Mr. Krieger: For the purpose of the record, I respectfully contend that the Commission, as presently constituted has no legal authority to grant any immunity, properly immunize, this witness against prosecution either in the State of New Jersey or by the Federal Government.

Mr. Ambrose: You are directed to answer.

* * * * * * *

[fol. 77] Mr. Ambrose: If there is a question of the state of the record, I am directing Mr. Murphy to answer this question.

(Reporter read back.)

Mr. Krieger: Now, for the purpose of this record, is that what you mean by constituting immunity?

Mr. Ambrose: For the purpose of the record, I will redirect Mr. Murphy to answer the question.

Mr. Krieger: And that constitutes immunity granted to him?

Mr. Ambrose: That is correct.

Mr. Krieger: And that he answer the question in that manner? I respectfully request that that does not constitute immunity.

Mr. Ambrose: You are directed to answer the question, Mr. Murphy.

Mr. Piazza: Mr. Murphy, you will have to give an answer.

A. On advice of counsel I stand on my constitutional rights.

Mr. Ambrose: You decline to answer on the grounds of possible self-incrimination on advice of your counsel?

Mr. Murphy: On advice of counsel I refuse to answer.

Mr. Ambrose: You refuse to answer, or, are you—

Mr. Murphy: On my constitutional rights.

Mr. Ambrose: Do you mean by that, Mr. Murphy, you decline to answer because of possible self-incrimination?

Mr. Murphy: I refuse and stand on my constitutional right.

Mr. Sirignano: Notwithstanding the fact that you are ordered to answer the question?

Mr. Murphy: I stand on my constitutional rights.

[fol. 78] Mr. Ambrose: And that you were granted immunity?

Mr. Krieger: I object to that. That's a conclusion. You can't have him determine whether or not he was granted immunity.

Mr. Ambrose: Your objection is noted, Mr. Krieger.

Mr. Ambrose: Would you proceed, Mr. Piazza.

Q. I direct your attention to a work stoppage that occurred on Monday, May 16, 1960, at Piers A, B, C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that a work stoppage would occur Monday, May 16, 1960, at the said terminal?

Mr. Krieger: Again, for the purpose of the record, I am going to do this and I assume the record will indicate and it won't be necessary to do it for each question. I have heretofore asked for pertinency, object; I have also indicated pertinency and there's been a denial to set therein the relevancy.

Mr. Ambrose: Do you have any new objection, Mr. Krieger, or is this the same one you made a dozen times?

Mr. Krieger: I just want to clear it and I will say it now so I won't have to do it again, and you people understand that it's so and you note that it's specifically urged for each one of the questions without the necessity of repeating each time.

Mr. Sirignano: That is understood and there is a—

Mr. Krieger: And there has been a contention of Mr.

Wall and myself of a denial of due process of law to the individual.

Mr. Sirignano: It is understood, Mr. Krieger, that you are making a blanket objection to the jurisdiction of this [fol. 79] Commission to carry on this investigation. It is noted as a blanket objection.

Mr. Krieger: No.

Mr. Ambrose: All your specific objections?

Mr. Krieger: Yes.

Mr. Sirignano: Except the claiming of self-incrimination, we want that individually as to each question.

Mr. Krieger: As far as each witness is concerned, that witness has the alternative to turn the privilege because of the denial of due process of law; he has not been made aware completely of the objects and pertinency of the question and therefore he has been compelled to invoke the constitutional privileges of self-incrimination, because of the denial of due process of law.

Mr. Ambrose: It will be noted.

* * * * * * * *

Q. Mr. Murphy, I direct your attention to a work stoppage that occurred on Monday, May 16, 1960, at Piers A, B and C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that a work stoppage would occur at the said terminal on Monday, May 16, 1960?

A. On advice of counsel, I stand on my constitutional rights.

Mr. Ambrose: You are declining to answer on the grounds of possible self-incrimination, Mr. Murphy?

Mr. Murphy: I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer, Mr. Murphy.

Mr. Murphy: I stand on my constitutional rights.

Mr. Ambrose: You are declining to answer on the grounds of possible self-incrimination?

Mr. Murphy: I do.

Mr. Ambrose: Proceed, Mr. Piazza.

Q. Mr. Murphy, when did you first hear that a work stop-[fol. 80] page was in progress at Piers A, B and C, Hobo-

ken? And I am refefring to the May 16, 1960 work stoppage?

Mr. Krieger: It's understood, as you said before, that my objection goes without repeating.

Mr. Ambrose: Yes, as you have said before.

Mr. Murphy: On advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Sirignano: Mr. Murphy, Mr. Ambrose and myself have conferred and we unanimously agree that you be ordered to answer the question. You are hereby ordered to answer the question.

Will you answer the question, please.

Mr. Murphy: On the advice of counsel I stand—

Mr. Sirignano: You persist in your refusal?

Mr. Krieger: I object to the witness being pressed. The witness has already answered.

Mr. Sirignano: Continue.

Q. Mr. Murphy, who were the persons that gave you the information about the work stoppage on May 16th, 1960 at the Hoboken Terminal of the American Export Line?

A. On advice of counsel I stand on my constitutional rights.

Mr. Sirignano: Mr. Murphy, Mr. Ambrose and myself have conferred and you are hereby ordered to answer the question.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Q. Mr. Murphy, did you, at any time, give orders to longshoremen or others such as shop stewards, that a work stoppage was to take place on May 16th, 1960 at the American Export Line Terminal in Hoboken?

A. On advice of counsel I stand on my constitutional rights.

[fol. 81] Mr. Sirignano: Mr. Murphy, Mr. Ambrose and I have decided to order you to testify in answer to the question. You are hereby ordered to answer the question.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Krieger: I might say this for the purpose of the record so that there will be no misunderstanding: of course, Mr. Murphy, is a layman and not a lawyer. When we use constitutional rights, of course, we all understand that he means the 14th Provision of the Constitution of the United States, the 5th Amendment of the United States Constitution and also the statutory rights.

Mr. Sirignano: And also the Constitution of the States of New York and New Jersey.

Mr. Krieger: New Jersey particularly.

* * * * * * * *

Q. Mr. Murphy, do you know whether the work stoppage that took place on May 16th, 1960 at the American Export Line Terminal was related to the presence of one James Markley on the piers as a security officer?

A. On the advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request he be directed to answer.

Mr. Sirignano: Mr. Murphy, you are hereby ordered to answer by Mr. Ambrose and myself.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Q. Mr. Murphy, did you have any conversations with any union officials of the I.L.A. prior to May 16, 1960 about the presence of James Markley on the Hoboken Terminal as a security officer?

A. On the advice of counsel I stand on my constitutional rights.

[fol. 82] Mr. Piazza: I respectfully request he be directed to answer.

Mr. Sirignano: You are hereby ordered, Mr. Murphy, by Mr. Ambrose and myself to answer the question.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Krieger: Again, for the purpose of the record so that he may not be misunderstood, the witness sitting in

the box, he is a layman and when he uses the constitutional rights he refers to the 14th Amendment and the 5th Amendment of the United States Constitution, Constitution of the State of New Jersey and also the lack of power and immunity heretofore indicated and which is not indicated in the instance.

Mr. Ambrose: Yes, I think you mentioned that before and it's on the record, Mr. Krieger.

Q. On May 16th, 1960, did you, Mr. Murphy, have a conversation with one Leland Andrews concerning this work stoppage that took place on May 16th, 1960 at the American Export Line Pier?

Mr. Sirignano: Can you fix the place?

Mr. Piazza: At the Hotel Meyer in Hoboken.

* * * * * * *

A. On the advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request he be directed to answer.

Mr. Sirignano: You are hereby ordered by Mr. Ambrose and myself to answer the question, Mr. Murphy.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

[fol. 83] Q. Did you, in the conversation with Mr. Andrews on the 16th of May, 1960, reach any agreement over the presence of Mr. Markley on the Hoboken Terminal of the American Export Lines in Hoboken?

A. On the advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request he be directed to answer.

Mr. Sirignano: You are directed to answer by Mr. Ambrose and myself.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Q. Mr. Murphy, on the morning of the 17th of May, 1960 were you on the American Export Line Hoboken Terminal?

A. On advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request he be directed to answer.

Mr. Ambrose: Mr. Murphy, you are directed after conference between Mr. Sirignano and myself to answer the question.

* * * * * * *

Q. Mr. Murphy, on May 17th, 1960 at the Hoboken Terminal of the American Export Line did you have a conversation with one Michael McNamara?

A. On the advice of counsel I stand on my constitutional rights.

Mr. Ambrose: The Commission directs you to answer.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Q. Mr. Murphy, on the morning of May 17th, 1960 at the American Export Line Terminal in Hoboken did you have a conversation with one Frank Rump?

A. On advice of counsel I stand on my constitutional rights.

[fol. 84] Mr. Piazza: I respectfully request he be directed to answer.

Mr. Sirignano: The Commission orders you to answer that question, Mr. Murphy.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Q. Mr. Murphy, on the morning of May 17th, 1960 did you have a conversation with one Carmine Bruno?

A. On advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Sirignano: The Commission orders you to answer the question, Mr. Murphy.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Q. Mr. Murphy, on the morning of May 17th, 1960 at the Hoboken Terminal did you have a conversation with one Eric Lempke?

A. On the advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request he is directed to answer.

Mr. Ambrose: The Commission directs you to answer the question.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Krieger: May I now ask Counsel this question, whether or not he's gone further in his scope in questions than were asked heretofore on matters that were heretofore submitted to the court of the State of New Jersey?

Mr. Piazza: Your Honor, I don't consider—

Mr. Sirignano: I think that's irrelevant as to the proceeding, Mr. Krieger.

[fol. 85] Q. Mr. Murphy, on the morning of the 17th of May, 1960 did you have a meeting with officials of the American Export Line at the Hoboken Terminal of the American Export Line?

A. On advice of counsel I stand on my constitutional rights.

Mr. Ambrose: The Commission directs you to answer.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Q. Did you, at that time, reach any agreement concerning the presence of Mr. Markley on the Hoboken Terminal as a security officer?

Mr. Krieger: Wait a minute. Just a minute. For the purpose of the record, I want to object for an additional ground now. It apparently appears that we are referring to an individual who evidently was an employee, and that appears as a matter of record at the Waterfront Commission of the American Export Lines. It apparently appears further that there may be some question as to whether or

not there's a violation of a federal statute in that respect. Or, in some respect, and therefore, the Commission is without jurisdiction, as a matter of law.

Mr. Sirignano: Proceed.

Mr. Piazza: I respectfully request he be directed to answer.

Mr. Sirignano: The Commission orders you to answer the question, Mr. Murphy.

Mr. Murphy: What was the question—on the advice of counsel I stand on my constitutional rights.

Mr. Ambrose: And you've been directed to answer that by the Commission.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Sirignano: Mr. Murphy, I would like to ask you a [fol. 86] question. Did you ever make any demand from any official of the American Export Line to fire Mr. Markley before the men went back to work?

. . . . . .

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Ambrose: The Chairman directs you to answer, Mr. Murphy.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Sirignano: Did you tell any official of the American Export Lines that the men would not go back to work until Mr. Markley was kept off the piers?

Mr. Murphy: On advice of counsel I stand on my constitutional rights.

. . . . . .

Mr. Ambrose: You are directed to answer.

. . . . . .

Q. Mr. Murphy, did you have a meeting with the Executive Vice President of American Export Line at the offices of the American Export Line at 39 Broadway in New York City in August, 1960?

A. On the advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request he be directed to answer.

Mr. Sirignano: Is that August date a correct date?

Mr. Piazza: August, 1960.

Mr. Wall: I'll object. That's immaterial, too far afield from the point of issue. You are talking about something about May 19th, and now you are in August. I say it's immaterial.

Mr. Ambrose: Your objection is noted.

• • • • • • • •

[fol. 87] Mr. Ambrose: Is that in relation to this May, 1960 strike?

Mr. Piazza: Yes. The question is directed to the presence of Mr. Markley on the piers.

Mr. Sirignano: I'll allow the question.

• • • • • • • •

Mr. Murphy: I refuse to answer on the advice of counsel and I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer by the Commission, Mr. Murphy.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Q. Mr. Murphy, did you, at that meeting with the Executive Vice President of the American Export Line, state that if Mr. James Markley walked on the piers A, B, and C in Hoboken there would be a strike?

Mr. Wall: What date was that?

Mr. Piazza: In August, 1960. It's already in the record.

A. On the advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request he be directed to answer.

Mr. Sirignano: The Commission orders you to answer that question, Mr. Murphy.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Ambrose: Just a minute, Mr. Counsel.

May I ask a few questions at this point, Mr. Counselor.

Did you, Mr. Murphy, ever discuss or give any orders to any shop stewards or officials of your local to pull the [fol. 88] men out on Piers A, B and C in the event Mr. Markley walked onto the piers in May of 1960 in the performance of his duty as a security officer for the American Export Lines?

Mr. Murphy: On advice of counsel I stand on my constitutional rights.

Mr. Ambrose: The Commission directs you to answer the question, Mr. Murphy.

Mr. Murphy: On advice of counsel I stand on my constitutional rights.

Mr. Ambrose: Mr. Murphy, do you know now whether Mr. Markley has ever, since May, 1960, walked on the piers in Hoboken, New Jersey of the American Export Lines in connection with his duties as a security officer for that company?

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

. . . . . .

Mr. Ambrose: You are ordered to answer my last question.

. . . . . .

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

. . . . . .

Mr. Wall: Maybe I can clarify this, Mr. Sirignano. What we want to know is simply this: Was Mr. Markley an employee of the Bi-State Waterfront Commission on May 19th, 1960 or by whom was he employed? That's all we want to know.

Mr. Piazza: On May 19th, 1960 he was an employee of the American Export Lines.

Mr. Wall: Have you got any records to snow that?

Mr. Ambrose: No. I think that at this point we ought to [fol. 89] also state for the record that Mr. Markley was previously employed at one time by this Commission. Now, I think we ought to see if the witness is aware of this.

Mr. Murphy, do you know if Mr. Markley was at any time employed by this Commission in any capacity whatsoever?

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Ambrose: You are ordered to answer by the Commission, Mr. Murphy.

Mr. Murphy: On advice of counsel I stand on my constitutional rights.

* * * * * * *

Q. Mr. Murphy, is it not true that the statement you made to the Vice President of the American Export Line in August, 1960 that if Mr. Markley steps on the Hoboken Terminal there would be a strike, is still in force today and that Mr. Markley cannot step on the pier today in pursuance of his duties as a security officer?

Mr. Wall: Now, I object to the form of the question. The question has already been answered. It's repetitious and this statement is alleged to have been made in August, 1960, some date in August. It's immaterial, irrelevant and it's too far away from May 19, 1960 to be in anywise relevant to this issue.

Mr. Sirignano: Would you break your questions down into two questions; Mr. Piazza.

Mr. Piazza: As to whether he had such a conversation.

Q. Mr. Murphy, did you, in August, 1960, tell the Executive Vice President of the American Export Line that if Mr. Markley stepped on the piers there would be a walkout?

[fol. 90] Mr. Ambrose: Your objection is renewed, Mr. Wall?

Mr. Wall: Yes, sir.

* * * * * * *

Mr. Krieger: For the purpose of the record, I want to object on the ground of pertinency, purpose. I want to object also on the further ground that there's no further description of an individual given or a confrontation, probably.

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Ambrose: He hasn't refused yet.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Ambrose: You are directed by the Commission to answer the questions.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Ambrose: May I ask a question, please.

In the event that Mr. Markley walked on the piers of Hoboken, New Jersey today on the American Export Lines would you order the membership of the I.L.A. present there off the piers?

Mr. Krieger: Just a minute, Mr. Murphy. I think that's a very unfair question, Mr. Ambrose, what he would do. I think again that's the type of a question, Mr. Ambrose, that we described before as beating a witness. I think that that goes beyond the scope of investigation. It only tends to exhibit an unfairness that I have heretofore described. It's surely a denial of due process of law, it's an attempt to hold this witness up to ridicule and I think it's a very unfair question, sir.

Mr. Ambrose: Your objection is noted.

Would you answer the question, please.

[fol. 91] Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer the question.

Mr. Murphy: On the advice of counsel I stand on my constitutional rights.

Mr. Krieger: Let me further indicate that this does not go to an investigation. You are asking what he would do in the future. That surely is not an investigation as to May of 1960.

Mr. Sirignano: Mr. Piazza, I think that from the pattern that has been established here, that the witness is going to persist in refusing to answer any questions despite a conferral of immunity by the Commission. In that event, do you wish to make a statement now?

Mr. Piazza: Well, then, in the light of that statement I respectfully request that this interview be closed at this time and that the next witness, Mr. Moody be called.

Mr. Sirignano: Mr. Malchman, please.

(Bench conference held.)

Mr. Ambrose: Back on the record.

May the record note that Mr. Irving Malchman, Special Assistant of the General Counsel of the Waterfront Commission of New York Harbor—

* * * * * * *

Mr. Sirignano: Mr. Malchman, the Commission has conferred and you are directed to institute contempt proceedings involving this witness for his persistence in his refusal to answer after he has been granted immunity.

Mr. Ambrose: You are excused, Mr. Murphy.

* * * * * * * *

[fol. 92]

IN THE SUPREME COURT OF NEW JERSEY

EXCERPTS FROM EXHIBIT "J" TO MOTION OF WATERFRONT COMMISSION (TESTIMONY OF JOHN MOODY, SR., BEFORE "DESIGNEES" OF WATERFRONT COMMISSION, OCTOBER 27, 1961)

COMMISSION MEETING

Re: JOHN MOODY, SR.

15 Park Row,
New York, New York.

October 27, 1961,
7:30 P. M.

Acting Commissioners:

MYLES J. AMBROSE, Executive Director.

WILLIAM P. SIRIGNANO, Esq., General Counsel.

Appearances:

For the Commission:

ANTHONY L. PIAZZA, Esq., Assistant Counsel.

ROBERT A. PIN, Esq., Assistant Counsel.

Witness:

JOHN MOODY, Sr., 1111 Washington Street, Hoboken, New Jersey.

Attorneys for Witness:

HAROLD KRIEGER, Esq., 921 Bergen Avenue, Jersey City, New Jersey.

ROBERT H. WALL, 880 Bergen Avenue, Jersey City, New Jersey.

Present:

GEORGE A. MERRILL, JR., Assistant to the Executive Director.

IRVING MALCHMAN, Esq., Assistant to the General Counsel.

[fol. 93] (Off the record discussion was held.)

Mr. Sirignano: It is understood then, I take it, Gentlemen, that all the exhibits that were introduced in connection with the questioning, the interrogation of Mr. Murphy, and all the objections raised by counsel in connection with the introduction of these exhibits into the record are made part of the record of the interrogation of Mr. Moody?

Mr. Krieger: And all the statements made as far as Murphy is concerned applies in this instance and is considered for all purpose as one record in both instances, as far as both individuals are concerned.

Mr. Sirignano: And then we will proceed directly to the questioning; is that correct, Mr. Krieger?

Mr. Krieger: And the objections and purposes—

Mr. Wall: All constitutional questions are the same.

Mr. Krieger: As far as the objections in the hearing are concerned, the constitutional questions pursuant to due process that was said before become part of this record in its entirety.

Mr. Sirignano: Any objection, Mr. Piazza?

Mr. Piazza: None.

JOHN MOODY, Sr., appearing as a witness, having been previously duly sworn, testified further as follows:

By Mr. Piazza:

Q. Mr. Moody, will you give your full name and address, please.

A. John E. Moody, 1111 Washington Street, Hoboken, New Jersey.

Q. Mr. Moody, are you an official of the ILA Independent?

* * * * * * *

Mr. Krieger: For the purpose of the record, of course, we object to the questions that we have objected to heretofore for all the reasons that the witness is compelled to [fol. 94] use his constitutional rights because of the denial of due process of law.

A. On advice of counsel I stand on my constitutional rights. I refuse—

* * * * * * *

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Ambrose: Let me just rephrase this question. Mr. Moody, are you an official of the International Longshoremen's Association Independent or the International Longshoremen's Association which is affiliated with the AFL-CIO?

Mr. Moody: On advice of counsel I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer the question.

Mr. Moody: I still stand on my constitutional rights.

Mr. Sirignano: Mr. Krieger, at this time, would you like to take the opportunity to interpret for your client and state his grounds—as you said before, with Mr. Murphy, he is a layman—on his constitutional rights?

Mr. Krieger: When an individual invokes his constitutional right, as an individual, he doesn't quite understand what right he refers to. So, it is clear for the purpose of this record, this witness stands on the constitutional right in that there's a failure to set forth full pertinency and purpose of this investigation. Details of the charges have not

been set forth. This is a public hearing. He has failed to be given that opportunity. The subpoena is limited in this nature. He is invoking the privilege of self-incrimination under protest, the protest being one, that such invocation or privilege comes about as a result of the Commission's [fol. 95] denial of due process of law; and when he uses the words, "constitutional rights," that includes his rights under the Fifth Amendment of the United States Constitution, 14th Amendment of the Constitution, the Constitution of the State of New Jersey and the statutes and of the State of New York.

• • • • • • • •

Mr. Piazza: I respecfully request that he be directed to answer.

Mr. Sirignano: You are hereby directed to answer that question.

A. I stand on my constitutional rights.

Q. Mr. Moody, I direct your attention to a work stoppage that occurred on Monday, May 16, 1960, at Piers A, B and C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that that work stoppage was to take place on Monday, May 16, 1960, at that terminal?

A. On advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Sirignano: The Commission orders you to answer that question.

A. I stand on my constitutional rights.

Q. Mr. Moody, would you tell the Commission the source of the knowledge that you had concerning the work stoppage at Piers A, B, C, Hoboken in May, 1960?

A. On advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Sirignano: You are hereby ordered to answer the question.

A. I stand on my constitutional rights.

Q. Mr. Moody, did you, at any time, prior to May 16, [fol. 96] 1960, give orders to any longshoremen, shop stewards or others to commence a work stoppage on Monday, May 16, 1960 because of the presence of one James Markley on the piers as security officer?

A. On advice of counsel I stand on my constitutional rights.

Mr. Sirignano: You are hereby ordered to answer the question.

A. I still stand on my constitutional rights.

Mr. Sirignano: Mr. Piazza, before we proceed further on the questioning, I think out of fairness to the witness that he ought to be explained what this proceeding entails and what is involved.

Mr. Moody, when you are asked a question and if you feel in good conscience that the answer to that question may somehow incriminate you, you have a perfect right to invoke your privilege against self-incrimination under the statutes of New Jersey and the Constitutions of New Jersey and New York. Do you understand that?

Mr. Moody: Yes, sir.

Mr. Sirignano: In the event that you are ordered to answer a question after you had once refused to, by the statutes of New York and New Jersey, the Commission has the authority to order you to answer that question. And once they order you to answer that question, that carries with it a conferral of immunity. That means if you answer the question, and you speak about some transaction that the question is about, then you cannot be prosecuted for any part you had in that transaction and, similarly, any evidence you give or any testimony you give cannot be used against you. Do you understand that? And, in addition, if you refuse to answer, after you have been ordered to answer, or if you answer falsely, you may be subjected to [fol. 97] prosecution either for contempt or for perjury. Do you understand that?

Mr. Moody: Yes.

Mr. Krieger: Mr. Sirignano, you are representing to this witness that he could not be prosecuted criminally for any incident that took place on the Hoboken piers in the County of Hudson, State of New Jersey, American Export Lines in May, 1960, or the year 1960, by either the State Government or the Federal Government of the United States of America?

Mr. Sirignano: Mr. Krieger, if the answer is directed to that specific transaction, and if the answer is responsive, he cannot be prosecuted for anything that is contained in his answer in reference to the question that was put to him by the State of New York or the State of New Jersey. It's not necessary, as the courts have held, for the purpose of conferring immunity that it must also confer Federal immunity.

Mr. Krieger: I want to say this, with all due deference to the advice you gave my client, Mr. Sirignano. And I appreciate it, but I also want to advise my client that under the laws of the State of New Jersey, if the question would tend to, and would lead to any other evidence, he would have a right to assert his privileges, and that is the Lerner case in the Supreme Court of the State of New Jersey.

Mr. Ambrose: That is your advice to your client. Thank you very much.

Mr. Krieger: Yes.

Mr. Sirignano: You mean by that, immunity would be conferred also to that act which tends to lead or to incriminate him?

Mr. Krieger: I don't think that immunity would extend to where it would tend to lead to evidence that can be secured therefrom.

[fol. 98] Mr. Ambrose: That is your advice to your client, we may proceed.

* * * * * * * *

Q. Mr. Moody, did you have any conversations with any other union official of the International Longshoremen's Association prior to May 16, 1960, about calling a strike concerning James Markley's presence on the Hoboken Terminal as a security officer?

A. On advice of my counsel, I stand on my constitutional rights.

Mr. Ambrose: You are directed by the Commission to answer the question.

A. I still stand on my constitutional rights.

Q. Would you please name the persons with whom you had these conversations?

A. On advice of counsel I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer.

A. I still stand on my constitutional rights.

Q. Did you have a conversation about calling a strike during the week of May 16, 1960, with one Mr. Gleason of the ILA?

A. On advice of my counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully ask—

Mr. Ambrose: You are directed to answer.

A. I stand on my constitutional rights.

Q. On the 17th of May, 1960, were you present on the terminal in Hoboken, which is called the American Export Lines Terminal? Were you present?

A. On advice of counsel, I stand on my constitutional rights.

Mr. Ambrose: The Commission directs you to answer.

A. I still stand on my constitutional rights.

[fol. 99] Q. Did you, on that date, May 17, 1960, tell the shop stewards, Frank Rump, Carmine Bruno, Eric Lempke to call the longshoremen out on strike because of the presence of Mr. Markley on the piers as a security officer?

A. On advice of counsel, I stand on my constitutional rights.

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Ambrose: You are directed to answer.

A. I still stand on my constitutional rights.

Q. Did you attend a meeting on May 17, 1960, in the offices of the American Export Lines at the Hoboken Terminal? Did you attend such a meeting?

A. On the advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Sirignano: You are hereby ordered to answer the question.

A. I still stand on my constitutional rights.

Q. Did you, at that meeting, state to Leland Andrews, another official of the American Export Lines, who attended the meeting, if Markley walks on the piers there would be a work stoppage?

A. On advice of counsel I stand on my constitutional rights.

Mr. Piazza: I respectfully request that he be directed to answer.

Mr. Sirignano: The Commission orders you to answer that question.

A. I still stand on my constitutional rights.

Q. Did you, either before May 16, 1960, or during the week of May 16, 1960, speak to Michael McNamara concerning a work stoppage at the American Export Lines Terminal over the presence of Mr. Markley on the piers?

. . . . . .

[fol. 100] Mr. Krieger: I am objecting to the question for all the reasons heretofore given, and also urge, in the Murphy situation and the Murphy questioning the additional grounds to be considered here, as well as the Murphy questioning, that there is a limitation and preemption. We respectfully contend that does not give this Commission jurisdiction. These questions are presently pending before the United States Supreme Court and not as yet finally determined by the United States Supreme Court. We urge all the reasons without encumbering the record. I think by stipulation we agreed it is unnecessary to do so. The reasons we urged in our jurisdictional statement to the United States Supreme Court, on jurisdiction, to the United States

Supreme Court, on the questions raised in that issue, and in those papers filed, which the Waterfront Commission has a copy, for reasons why this investigation and this conduct, this hearing should not continue and these questions are improper, and for all the other reasons.

Mr. Ambrose: I don't quite understand your objection. Are you saying you have some other law suits pending when you raise the judicial issue?

Mr. Krieger: That's correct.

Mr. Ambrose: And that we have no right, there is no pertinency to these questions?

Mr. Krieger: Yes.

Mr. Ambrose: Is that what you mean?

Mr. Krieger: Yes.

Mr. Ambrose: You may proceed.

Mr. Krieger: And that the record, instead of offering it physically here, that was filed in the United States Supreme Court, be considered part of this file, in this record.

* * * * * * *

Q. Prior to May 16, 1960, or during the week of May 16, 1960, did you have a conversation with Michael McNamara, concerning a work stoppage to be called on May 16, 1960, [fol. 101] over the presence of James Markley on the Hoboken Terminal as a security officer?

A. On advice of counsel I refuse to answer. I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer.

A. I still stand on my constitutional rights.

Mr. Ambrose: May I interrupt. Do you know Michael McNamara, Mr. Moody?

Mr. Moody: On advice of counsel I still stand on my constitutional rights.

Mr. Ambrose: You are directed to answer.

Mr. Moody: I still stand on my constitutional rights.

Mr. Ambrose: Do you know Mr. William Murphy?

Mr. Moody: On advice of counsel, I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer.

Mr. Krieger: I am going to object.

Mr. Ambrose: Just a minute. You make your objection when I finish.

Mr. Moody: I still stand on my constitutional rights.

Mr. Ambrose: Do you see Mr. Murphy sitting in this room?

Mr. Krieger: I am going to object. I have a right to object.

Mr. Ambrose: All right, you object.

Mr. Krieger: Now you are getting into the same sphere that was highly criticized by the United States Supreme Court in an investigation of this nature. Something like a question: "Do you hate your mother;" or, "Do you beat your mother." The witness, because if he opens up the door, and he answers one question, he may lead to the answer of other questions or he may be compelled to answer, and I [fol. 102] respectfully contend that it is improper examination in that respect as to who he sees or whether or not he sees you on the bench, because under the circumstances it may be a question of opening the door.

Mr. Ambrose: Mr. Krieger, just for the purpose of the record, I would like to indicate my purpose of asking this question. The question is to determine, in fact, if the witness will answer any questions at all, and end up this investigation.

May we proceed. Your objection is overruled.

Mr. Krieger: To answer you, Mr. Ambrose,—

Mr. Ambrose: I am directing Mr. Moody, at this time, to answer whether or not Mr. William Murphy is in this courtroom.

Mr. Wall: I object to the question as being irrelevant, immaterial and having no part of the investigatory powers.

Mr. Ambrose: Your objection is noted.

Thank you, Mr. Wall.

You are directed to answer.

Mr. Moody: I stand on my constitutional grounds.

Mr. Sirignano: Do you know Leland Andrews, Mr. Moody?

Mr. Moody: On advice of counsel I stand on my constitutional rights.

Mr. Sirignano: You are ordered to answer that question.

Mr. Moody: I still stand on my constitutional rights.

Mr. Sirignano: Do you know Mr. Lyle Bull, Executive Vice President of the American Export Lines?

Mr. Moody: On advice of counsel I stand on my constitutional rights.

Mr. Sirignano: You are ordered to answer the question.

[fol. 103] Mr. Moody: I still stand on my constitutional rights.

Mr. Ambrose: Did you, at any time, either in Hudson County, in the State of New Jersey, or in the County of New York, in the State of New York, have any discussions with any executives of the American Export Lines, concerning Mr. Markley's employment with that shipping company?

Mr. Moody: On advice of counsel, I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer.

Mr. Moody: I still stand on my constitutional rights.

Mr. Ambrose: Do you know whether Mr. Markley has ever been on the piers in the performance of his duties as security officer of the American Export Lines since his employment in May of 1960?

Mr. Moody: On advice of counsel I stand on my constitutional rights.

Mr. Ambrose: You are directed to answer.

Mr. Moody: I still stand on my constitutional rights.

Mr. Ambrose: Do you have any further questions, Mr. Piazza?

Mr. Piazza: I see no point in continuing the examination.

Mr. Ambrose: Neither do I.

Mr. Piazza: I move that it be adjourned, and further move for an action on contempt.

Mr. Ambrose: So do I.

Mr. Malchman, will you step up to the bench, please.

Mr. Malchman, you are directed by the Commission to file such proceedings that are necessary in connection with contempt of this witness.

* * * * * * *

[fol. 104] Mr. Ambrose: You are excused, Mr. Moody.

* * * * * * * *

Mr. Piazza: I move that the matter be terminated.

Mr. Ambrose: The proceeding is terminated, for the time being, this phase, I should say of the investigation.

(7:55 P. M.)

IN THE SUPERIOR COURT OF NEW JERSEY

Excerpts From Exhibits Introduced by Waterfront Commission in Proceedings of October 27, 1961, Before "Designees" of Said Commission

* * * * * * * *

EXHIBIT 1 (CERTIFICATION NOT PRINTED)

LETTERHEAD OF

WATERFRONT COMMISSION OF NEW YORK HARBOR

Secretary
Waterfront Commission of New York Harbor
15 Park Row
New York 38, New York

Dear Sir:

The Waterfront Commission has subpoenaed William Murphy to appear and testify in an investigation initiated by the Commission and conducted pursuant to the provisions of the Waterfront Commission Act, Part I, Article IV. By virtue of the authority vested in me by the Waterfront Commission Act, Part I, Article III, Section 3, I hereby designate Myles J. Ambrose, Executive Director of said Commission, to act in my place as a member of the Commission at such investigation on any occasion at which I am unable to attend and to confer immunity upon said William Murphy pursuant to the provisions of the Waterfront Commission Act, Part II, Section 5-b(5).

[fol. 105] This authority and designation to act in my place or the purpose of said investigation shall take effect

immediately and shall continue in force until revoked by written instrument filed in the office of the Secretary of the Commission.

Dated: October 13, 1961

/s/ HAROLD R. TYLER, JR.,
Commissioner.

cc: COMM. TYLER
COMM. THOMPSON
M. J. AMBROSE
W. P. STRIGNANO

EXHIBIT 5 (CERTIFICATION OF MAILING NOT PRINTED)

October 10, 1961

Honorable Lawrence A. Whipple
Prosecutor of Hudson County
Hudson County Court House
Jersey City 6, New Jersey

Dear Mr. Whipple:

This Commission, pursuant to its investigatory powers under Article IV of Part I of the Waterfront Commission Act (N. J. S. A. 32:23-10) is presently conducting an investigation into a strike that took place at the American Export Line Terminal in Hoboken, New Jersey on May 16 through May 20, 1960. As part of this investigation, to determine whether any violations of the Compact were committed, this Commission has questioned William Murphy and John Moody, Sr., officials of the International Longshoremen's Association, while under subpoena, concerning this strike. Mr. Murphy's most recent known address is 218 [fol. 106] Roosevelt Street, Union City, New Jersey. Mr. Moody's most recent known address is 1111 Washington Street, Hoboken, New Jersey.

Heretofore, Messrs. Murphy and Moody have refused to answer questions concerning their participation in the strike of May 16, 1960. On May 22, 1961 the New Jersey Supreme

Court affirmed the civil contempt judgment of the Superior Court dated June 20, 1960. They appeared on October 3, 1961 as witnesses at the offices of the Waterfront Commission pursuant to the civil contempt judgment. Both Messrs. Murphy and Moody refused to answer questions on the grounds that such answers might tend to incriminate them.

In accordance with § 5-6(5) of Part II of the Waterfront Commission Act (N. J. S. A. 32:23-86), this Commission wishes to confer immunity on William Murphy and John Moody, Sr., with respect to their testimony concerning the foregoing subject matter. The purpose of this conferral of immunity is to obtain the actual facts concerning the strike called on May 16, 1960 against the American Export Lines in Hoboken, New Jersey.

Pursuant to the requirements of law, written notice must be given to the appropriate State attorney general and the appropriate district attorneys or prosecutors having an official interest therein 24 hours in advance of the granting of immunity by the Commission. Accordingly, this Commission will proceed with its investigation after the expiration of this 24 hour period. In the event that you have any comments on this procedure, we would appreciate being advised as soon as possible.

Sincerely yours,

MYLES J. AMBROSE
Executive Director

[fol. 107]

October 23, 1961

Honorable Frank Hogan
District Attorney, New York County
New York, New York

Dear Mr. Hogan:

This Commission, pursuant to its investigatory powers under Article IV of Part I of the Waterfront Commission Act (McK. Unconsol. Laws, Title 29, Book 65, Part III, Subdivision 3, Section 9906) is presently conducting an investi-

gation into a strike that took place at the American Export Line Terminal in Hoboken, New Jersey on May 16 through May 20, 1960. As part of this investigation, to determine whether any violations of the Compact were committed, this Commission has questioned William Murphy and John Moody, Sr., officials of the International Longshoremen's Association, while under subpoena, concerning this strike. Mr. Murphy's most recent known address is 218 Roosevelt Street, Union City, New Jersey. Mr. Moody's most recent known address is 1111 Washington Street, Hoboken, New Jersey.

Heretofore, Messrs. Murphy and Moody have refused to answer questions concerning their participation in the strike of May 16, 1960. On May 22, 1961 the New Jersey Supreme Court affirmed the civil contempt judgment of the Superior Court dated June 20, 1960. They appeared on October 3, 1961 as witnesses at the offices of the Waterfront Commission pursuant to the civil contempt judgment. Both Messrs. Murphy and Moody refused to answer questions on the grounds that such answers might tend to incriminate them.

In the course of the investigation it may become relevant to question Messrs. Murphy and Moody about meetings that took place in New York County with officials of the American Export Line in August of 1960 at 39 Broadway and at the apartment of Admiral Will.

[Vol. 108] In accordance with § 5-b(5) of Part II of the Waterfront Commission Act (Section 9906, McK. Unconsol. Laws), this Commission wishes to confer immunity on William Murphy and John Moody, Sr., with respect to their testimony concerning the foregoing subject matter. The purpose of this conferral of immunity is to obtain the actual facts concerning the strike called on May 16, 1960 against the American Export Lines in Hoboken, New Jersey.

Pursuant to the requirements of law, written notice must be given to the appropriate State attorney general and the appropriate district attorneys or prosecutors having an official interest therein 24 hours in advance of the granting of immunity by the Commission. Accordingly, this Commission will proceed with its investigation after the expiration

of this 24 hour period. In the event that you have any comments on this procedure, we would appreciate being advised as soon as possible.

Sincerely yours,

MYLES J. AMBROSE
Executive Director

[fol. 109]

EXHIBIT 6

STATE OF NEW JERSEY
DAVID D. FURMAN
Attorney General

October 18, 1961

Mr. Myles J. Ambrose
Executive Director
Waterfront Commission of
New York Harbor
15 Park Row
New York 38, New York

Dear Mr. Ambrose:

I have your recent letter in which you furnish the information that the Waterfront Commission seeks to confer immunity on William Murphy and John Moody, Sr., with respect to their testimony relevant to the investigation of the American Export Line Terminal strike.

As Attorney General of New Jersey I have no objection to the Commission's so conferring immunity pursuant to N. J. S. A. 32:23-86.

This office will be interested in learning the outcome of the investigation.

Sincerely yours,

DAVID D. FURMAN
Attorney General

DDF:jk

[fol. 110]

EXHIBIT 7

Letterhead of District Attorney of the County of New York

October 25, 1961

Honorable Myles J. Ambrose
Executive Director
Waterfront Commission
of New York Harbor
15 Park Row
New York 38, New York

Dear Mr. Ambrose:

Thank you very much for your letter of October 23 in which you advise me that the Commission may decide to confer iminunity upon William Murphy and John Moody, Sr. in connection with your investigation into a strike that took place at the American Export Line Terminal in Hoboken, New Jersey on May 16 through May 20, 1960.

This office has no objection to the proposed offers of immunity to the two individuals mentioned. Your kindness in communicating with us in this matter is much appreciated.

Sincerely,

FRANK S. HOGAN

[fol. 111] EXHIBIT 8

Letterhead of State of New York, Department of Law

October 26, 1961

Hon. Myles J. Ambrose
Executive Director
Waterfront Commission of New York Harbor
15 Park Row
New York 38, N. Y.

Dear Mr. Ambrose:

This is to acknowledge receipt of your letter dated October 24, 1961 concerning William Murphy and John Moody, Sr.

This office has no objection to the proposed grant of immunity to the above-named persons.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By: S. A. HIRSHOWITZ
Samuel A. Hirshowitz
First Assistant
Attorney General

[fol. 112]

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—HUDSON COUNTY
Docket No. L-4257-61, L-4258-61
Civil Action

IN THE MATTER
of
the Application of the WATERFRONT COMMISSION OF NEW YORK HARBOR to Punish WILLIAM MURPHY for Failure to Obey a Subpoena.

IN THE MATTER
of
the Application of the WATERFRONT COMMISSION OF NEW YORK HARBOR to Punish JOHN MOODY, SR., for Failure to Obey a Subpoena.

(For Civil and Criminal Contempt)

DEFENDANTS' ANSWER TO MOTIONS FOR CONTEMPT

Answering the motions of the Waterfront Commission of New York Harbor in the above entitled cause, to punish the defendants for contempt, the defendants say:

1. Defendants deny each and every allegation set forth in the Motion of the Waterfront Commission of New York Harbor, and leave the Movant to their proof as to the allegations contained therein.

First Separate Defense

The purported conferral of immunity upon the defendants was invalid and of no legal force and effect because [fol. 113] (a) it expressly excluded immunity against fed-

eral incrimination; (b) it was done in violation of statutory and constitutional provisions pertaining to delegation and sub-delegation of the power to confer such immunity; (c) it did not comply with the statutory requirements for notification to the law officers of the respective states; (d) it was not conferred upon each of the defendants as to each question asked with the requisite explicitness and certainty to assure the effectiveness of the purported immunity; (e) it was a denial of due process of law, both state and federal, for all of the reasons set forth in this answer.

Second Separate Defense

The Commission does not have and has never had jurisdiction to subpoena, to interrogate, to move for contempt against, or to extend immunity to the defendants in regard to the subject matter hereof, in that said subject matter does not come within any of the statutory granted powers of the Commission and in that said subject matter is preempted by the Federal Labor Management Relations Act.

Third Separate Defense

The Commission is and at all times had been without constitutional power to interrogate the defendants or to proceed against them in regard to contempt or immunity, because at each of the respective legally determinative stages of these proceedings, including the prior interrogational and contempt proceedings, the Commission has denied to the defendants due process of law under the federal and state constitutions by failing to give them adequate apprisal of the purpose and pertinency of the interrogations.

Fourth Separate Defense.

The denial of federal and state due process to the defendants which was occasioned by the Commission's failure to give them adequate apprisal of purpose and pertinency in the prior interrogation and contempt proceedings is an [fol. 114] integral part of the continuing denial of due process in the instant contempt proceedings. The denial of due process in the instant contempt proceedings arises from the

cumulative effects of said prior denials of due process plus the subjection of the defendants, in further violation of federal and state due process of law, to a procedure in the instant proceedings for immunity and contempt whereby the defendants were forced to act in the dark, without an opportunity to form a rational choice, as to whether or not to invoke the privilege against self-incrimination under the threat by the Commission to confer immunity. These unconstitutional procedural disadvantages were inflicted upon the defendants by reason of the Commission's refusal to apprise them of the incriminatory information in its possession and by its refusal to produce any witnesses against them for confrontation and cross examination, thereby depriving the defendants of their due process right and opportunity to determine on a rational and fairly informed basis whether or not to incur the grave legal and social disadvantages of invoking the privilege against self-incrimination, and likewise whether to incur the severe legal disadvantages of a coercively conferred "immunity."

Fifth Separate Defense

Defendants further assert that the Movant has failed to grant immunity as required by law, and defendants cannot be denied the constitutional and statutory right to assert the privilege against self-incrimination.

An examination of the Movant papers demonstrates an acknowledgment that the attempted conferring of immunity was not as broad as the continued use of the privilege as provided for by statute.

Krieger & Chodash, By ..... Robert Wall,
Attorneys for Defendants.

[fol. 115]

IN THE SUPERIOR COURT OF NEW JERSEY

DEFENDANTS' NOTICE OF MOTION FOR BILL OF PARTICULARS

To: Robert A. Pin, Esq., Attorney for the Waterfront Commission of New York Harbor, 60 Hudson Street, Hoboken, New Jersey.

Sir:

Please take notice that on Tuesday, November 21, 1961, at 10:00 A. M. in the forenoon, or as soon thereafter as counsel may be heard, before the Honorable Joseph L. Smith, J. S. C., at the Court House, Jersey City, New Jersey, the undersigned will move for a bill of particulars on behalf of both of the defendants in the above captioned cause. The particulars to be sought by the defendants are:

1. What is the information, if any, which the Waterfront Commission of New York Harbor possesses, pointing to the conclusion that the longshoremen's work stoppage at piers A, B and C of the American Export Lines in Hoboken, New Jersey, between May 16 and May 20, 1960 constituted a violation of the Bi-State Waterfront Commission Compact; and more particularly, how does any such information possessed by the Commission point to the conclusion that the defendants, William Murphy and John Moody, Sr., had knowledge of, or had any participation in, any such violation of said Bi-State compact? The particulars which the defendants demand in this paragraph 1 shall please state, in full detail, names, places, dates, and subject matter concerning any conversations or other communications between any persons, including the Commission, its staff, any other government officials, the defendants, any of their alleged collaborators, any of the persons to whom they are alleged to have made any threats or demands in connection with the subject matter herein, any informants (direct [fol. 116] or indirect) from whom the Commission has received information relevant to the subject matter of this paragraph 1.

2. Did the Commission possess, prior to 3:00 P. M. May 19, 1960, any of the information requested under paragraph

1 above? If so, please specify in detail such information so possessed by the Commission prior to said time.

3. Specify in detail, in the manner and detail requested in paragraph 1 above, any and all information possessed by the Commission which points to the conclusion that any actions of the defendants Murphy and Moody in connection with the work stoppage referred to in paragraph 1 above, or any information possessed by Murphy and Moody relating to such work stoppage, constitutes a subject matter of which the Commission had continuing jurisdiction after the termination of said work stoppage or has continuing jurisdiction down to the present time. In replying to this paragraph, the Commission is requested to specify in full factual detail all of the circumstances of which it has knowledge, and names, places and dates pertinent thereto, which would support or tend to support the conclusion that the Commission's continuing attempts to interrogate the defendants Murphy and Moody since October 3, 1961 and down to the present time are justified as relating to a subject matter within the jurisdiction of the Commission and not preempted by the Federal Labor Management Relations Act.

4. State in detail, in the manner requested in paragraph 1 above, the information in the possession of the Commission which points to the conclusion that the alleged continuing absence of James A. Markley from piers A, B and C of the American Export Lines in Hoboken, New Jersey is (a) a matter involving a violation of the bi-state compact; and (b) attributable to any conduct of defendants Murphy or Moody; or (c) is a matter of which they have knowledge.

[fol. 117] 5. Taking each and every question which the Commission addressed to the defendants Murphy and Moody in the respective interrogational proceedings on May 19, 1960, October 3, 1961, and October 27, 1961, please state in full factual detail, in the manner requested in paragraph 1 above, what information, if any, the Commission possessed at said respective times which supported or tended to support the conclusion that each of such questions dealt with a subject matter which involved violation of the bi-

state compact, or involved any other matter of which the Commission had jurisdiction at said respective times, as distinct from matters of which the National Labor Relations Board had jurisdiction, either exclusive or concurrent.

6. Please set forth in full factual detail, in the manner requested in paragraph 1 above, including production of authenticated copies of all pertinent documents, records, notes and memoranda of any kind, an account of any and all communications and other dealings, oral or written, between the Commission and any officials of the United States Government relating to the subject matter of the Commission's interrogation of defendants Murphy and Moody on May 19, 1960, October 3, 1961 and October 27, 1961, and relating to each and every question addressed by the Commission to said defendants on said dates, whether such dealings or communications with officials of the United States Government had preceded or followed said dates or have occurred on the said dates.

7. In the same manner as is requested for the Commission's response to paragraph 6 above, set forth in full factual detail, including all relevant documentation, what have been the communications or other dealings, oral or written, between the Commission and each and every one of the state law officers (attorney generals and district or prosecuting attorneys) of New York and New Jersey concerning the same subject matter as is referred to in paragraph 6 hereof.

[fol. 118] 8. Set forth in full factual detail, in the manner requested in paragraphs 1, 6 and 7 hereof, the circumstances of all communications or other dealings, written or oral, between Commissioners Harold R. Tyler, Jr. and David C. Thompson, on the one hand, and any and all other employees or officials of the Commission on the other hand, from which the defendants Murphy and Moody, and the court or courts having jurisdiction of the within contempt proceedings, and any jury in such proceedings, may fairly and rationally determine whether said Commissioners Tyler and Thompson have duly discharged their official functions in relation to the subject matter of the instant contempt proceedings and of the prior contempt proceedings

herein, and in relation to the conferral of immunity on the defendants herein, or whether said Commissioners Tyler and Thompson have abdicated said functions or have exercised them without proper regard to their own personal exercise of their official responsibilities in the premises. In furnishing the particulars requested under this paragraph, it is requested that Commissioners Tyler and Thompson set forth any and all communications or other dealings, written or oral, pertinent thereto, and that they not merely recite once again the formal documents purporting to exhibit the supposed exercise of their authority in the premises. It is the object of this paragraph to ascertain, in full factual detail, whether Commissioners Tyler and Thompson, at any or all stages of the instant or prior proceedings against defendants Murphy and Moody, have exercised a responsible statutory discretion with adequate knowledge of the facts of the case, or whether the within interrogational and contempt proceedings, as well as the purported conferral of immunity upon the defendants, have been in effect the results of assumptions of responsibility and authority by persons other than Commissioners Tyler and Thompson.

[fol. 119] In support of the within motion for a bill of particulars, the defendants will rely on their brief filed in the Superior Court of New Jersey, Hudson County on November 10, 1961, their supplemental and reply brief filed in said Court on November 15, 1961, their "Verified Answer to Motions for Contempt," their interrogatories filed herewith, their "Memorandum in Support of Right to Discovery by Motion for Bill of Particulars and Interrogatories" and the record of this cause and of the prior contempt proceedings herein.

Krieger & Chodash, By .....Harold Krieger,
Robert Wall, Attorneys for Defendants.

Dated: .....

[fol. 120]

IN THE SUPERIOR COURT OF NEW JERSEY

To: Robert A. Pin, Esq., Attorney for the Waterfront Commission of New York Harbor, 60 Hudson Street, Hoboken, New Jersey.

DEFENDANTS' REQUEST FOR JURY TRIAL—November 16, 1961

Sir:

Please take notice that on November 21, 1961, at 10:00 A. M. in the forenoon, or as soon thereafter as counsel may be heard, before the Honorable Joseph L. Smith, J. S. C., at the Court House, Jersey City, New Jersey, the undersigned attorneys for the defendants herein, will make demand for a jury trial in these proceedings for civil and criminal contempt, subject to the following conditions: If the Court denies the motions for contempt or otherwise disposes of those motions favorably to the defendants on any of the grounds of law asserted in the defendants' answer to said motions, this demand for jury trial will become inoperative. It is the defendants' intention to request the Court to dispose first of all such issues of law, and further, if the motions for contempt are not denied on such grounds of law, it is defendants' further intention to move that the trial of the issues of fact herein shall be deferred pending completion of the discovery proceedings which the defendants shall seek herein pursuant to their motion for bill of particulars and their interrogatories.

In support of this demand for jury trial, defendants rely on R. R. 3:8-3 and 4:87-3.

Krieger & Chodash, By ..... Robert Wall,
Attorneys for Defendants.

Dated: November 16, 1961.

[fol. 121]

IN THE SUPERIOR COURT OF NEW JERSEY

Excerpts From Testimony

November 21 and 22, 1961.

Before:

HON. JOSEPH L. SMITH, *J. S. C.*

APPEARANCES:

Robert A. Pin, Esq., and Irving Malchman, Esq., for the Waterfront Commission of New York Harbor.

Harold Krieger, Esq. (Krieger & Chodash) and Robert H. Wall, Esq., for the Defendants.

COLLOQUY RE MOTIONS

(2)* The Court: Mr. Pin, may I have a statement from you as to what matter you are here on? The matter that you are the moving party on.

Mr. Pin: This is an application by the Waterfront Commission of New York Harbor, pursuant to the Statutes and Rules, moving this Court to find John Moody, Sr., and William Murphy guilty of contempt of this Court after refusal without justification to obey a valid subpoena. More particularly, it is addressed to the refusal of both Murphy and Moody to answer pertinent questions before the Waterfront Commission upon an alleged claim that their answers may tend to incriminate them despite the fact that immunity has validly been conferred upon them in accordance with the Statute in such case made and provided.

The moving papers contain the entire transcript of the action to date, including in full the questioning and the answers or purported answers along with argument of counsel for both Murphy and Moody and are annexed to our moving papers as exhibits thereto.

---

* References in parentheses are to pages of the Transcript of Testimony.

(3) The Court: Is this pursuant to a Rule to Show Cause made on the 3rd of November, 1961, by Judge Artaserse?

[fol. 122] Mr. Pin: The order was actually made November 1st, though returnable on November 3rd.

The Court: And adjourned until today.

Mr. Pin: Pursuant to your instructions it was adjourned until today for full briefing.

The Court: That is your motion?

Mr. Pin: Yes, sir.

The Court: Mr. Krieger, may I have a statement of what you gentlemen are the moving parties on?

Mr. Krieger: I appear, Harold Krieger, of the law firm of Krieger and Chodash, and Robert Wall appears for both of the defendants, namely, John Moody, Sr., and William Murphy, the defendants in this cause.

The Court: Which one do you appear for?

Mr. Krieger: We appear for both jointly.

The Court: You both appear for both?

Mr. Krieger: Both of the defendants.

The Court: You appear in opposition to this Rule to Show Cause?

(4) Mr. Krieger: Yes, sir.

The Court: And what is your motion?

Mr. Krieger: Our motion is for a dismissal of the Order to Show Cause and a finding by the Court that the defendants herein are not guilty of any contempt. May I state further for the Court that we heretofore had a motion returnable—

The Court: I want to know all the motions that we've got.

Mr. Krieger: We originally had a motion returnable on the 3rd day of November, 1961, which was adjourned until today, for a dismissal of the subpoena, and the reasons set forth in that motion, if your Honor please, are such that we can say that both of the matters can be argued together, because a disposition of one—

The Court: I don't understand what that motion is. What was that motion?

[fol. 123] Mr. Krieger: That motion—

The Court: Was that a motion to quash the subpoena?

Mr. Krieger: That is the intent.

The Court: What was your motion?

(5) Mr. Krieger: A motion to quash the subpoena.

The Court: When was that returnable?

Mr. Krieger: The 3rd day of November, 1961, and carried until today.

The Court: All right. That was the motion to quash the subpoena. What else? That was consolidated with the present motion of the Waterfront Commission to hold these two men in contempt.

Mr. Krieger: That is correct. Now, we have three other motions, one for a jury trial, that is, in the event that the Court makes an adverse ruling insofar as the law is concerned in the case, which is the first issue before the Court, and the Court then determines that there is a question to be decided here other than the law that is applicable thereto, then we have a motion for a jury trial, and a motion for a bill of particulars, and a motion for interrogatories.

The Court: Is there a separate Notice of Motion for interrogatories?

Mr. Krieger: No, your Honor. Under the Rules, that is not a motion. Under the Rules, that is served, the original of which (6) was served.

The Court: How does that come before me?

Mr. Krieger: To compel answers thereto.

* * * * * * *

(6-11) The Court: * * * I have no Notice of Motion for that. If you want to now put on the record a Notice of Motion to compel answers to interrogatories—will you accept notice of that motion?

Mr. Pin: To the extent that that motion is co-extensive with a motion to compel discovery. It covers the same area—

The Court: That's right.

[fol. 124] Mr. Pin: If it is represented by counsel as it is in his brief, I have no objection to that coming before the Court at the present time.

The Court: The matter is not before me until that is done.

All right. You may proceed.

* * * * * * *

[fol. 149] Mr. Krieger: If your Honor please, I respectfully submit that ordinarily when, before a State agency or body or any other forum, a witness asserts privilege and the body or forum determines that the witness hasn't the right to assert privilege, the matter then comes into court on a motion or in some other form to compel an answer and the Court determines factually as to whether or not the witness had any apprehension. Now, the question for us to determine at this moment is: Is it necessary to determine factually as to whether or not there is any apprehension on the part of the defendants, or are the facts before the Court sufficient for the Court to make a determination of apprehension because of the statements made, the environment of the investigation, the purposes of the investigation, the statements made by the Waterfront Commission that they are investigating a crime, an illegal act? Is that sufficient?

I respectfully submit it is sufficient. I submit it is sufficient, where the Waterfront Commission came into open court and said in (54) this matter, "We recognize the right of the defendants in this instance to plead privilege of self-incrimination because of the offense that may be involved."

I, therefore, respectfully submit that factually it appears upon its face, but if it should be determined that factually it does not appear upon its face sufficiently, then the Court or counsel would be duty bound to offer additional testimony for the Court to make a determination factually if that were so; and how would such proof be offered? Such proof would be offered either by putting the witness on the stand who would say upon examination of the testimony in this case—somebody qualified as a Federal attorney in Federal laws—and say that an examination of the testimony, an examination of the charges, an examination of the incidents, all these incidents, would be sufficient to charge so-and-so with this type of a crime.

The Court: The petitioner says among other reasons for this investigation was to determine whether there had been [fol. 150] any violation not only of the Compact but any rules or (55) articles looking to revocation of any permits or licenses that may have been granted.

Mr. Krieger: Your Honor is absolutely correct, "among other purposes." In other words, the exclusive purpose of

this investigation—even if the exclusive purpose of the investigation was limited to that only, but they didn't say that was the exclusive purpose, but if it was the only, exclusive purpose and it would appear that in that exclusive purpose a person could be involved in a criminal offense that would go outside of giving testimony for that purpose, he would have the right to assert privilege even under those circumstances, but that is not involved here.

As I started saying, factually, the only other way that additional facts would be necessary—and again I say I respectfully submit the record is so abundant, their own record, with their own statement of an illegal act, coercion, violation of the law, the fact that we were going on the waterfront to keep watchmen off the waterfront, that there is a reasonable inference that could be taken therefrom; but, as I started to say, if (56) additional proof would be required, there could be an examination of the defendants, themselves, but that examination, if your Honor please, would be a very limited one because again the right of privilege exists.

You could say, "What acts could you possibly be involved in?" and the individual could possibly say, "There are a number of Federal acts," but you could not ask him in what way, the manner in which, because then you would be forcing him to testify against himself, and that is what the courts have stated. The courts have said specifically, "All surrounding factors, circumstances, type of agency, purposes," and so forth. This agency is a law enforcement agency.

. . . . . .

[fol. 153] As far as the area of apprehension, that is not difficult in this situation, because (62) there are numerous situations, there are numerous statutes, which are applicable, and they are cited in our brief; and might I state that the Court recognizes that counsel has a right in his argument before the Court to point out wherein they appear so the Court is not called upon to guess, and in this instance the Court is not called upon to do so, as I will soon indicate to the Court.

In Title 18 of the United States Code, Annotated, Section 371, we start off with conspiracy, and that is what they

contend here, that there was a conspiracy on that day to do certain things, namely, on May 17th or May 16, 1960.

"Conspiracy to commit an offense or to defraud the United States.

"If two or more persons conspire either to commit any offense against the United States—"

The Court: What section of the Code is that?

Mr. Krieger: That is 371, if your Honor please. That is the broad conspiracy statement. So that we have the conspiracy here. Now, (63) conspiracy to commit what? Could there be any lead, could there be any connection in any manner?

Then, your Honor please, your Honor will recall they had said they were investigating—as a result of numerous thefts from the piers that they had set up this investigation, because of thefts from the piers and these wharfs, and that they had separated the watchmen from the union as such so there could be no control, and that they also say in their [fol. 154] history annexed to their moving papers, in their affidavit, that the union continued to try to control the watchmen. As they said in their record, they even quoted from testimony given, testimony given in hearings that an individual who is a watchman had been reprimanded by a union official because he had turned in someone who had committed a theft on the pier, and that is why they didn't want to have watchmen under control of the union, as such, and separating them, and in this instance, because Markley was not a member of this union, because Markley, as they say, was an independent individual formerly employed by the Waterfront Commission (64) who was given a job by the American Export Lines as a watchman, it was reasonable to conclude they had no control over him.

The Court: As I read the record, Markley has not worked a single day on the pier yet.

Mr. Krieger: That is right. They said he worked there when he was brought upon the pier. They say he is working for the company but he is not permitted to go on the pier. That is their contention, he is employed by the company. They admit employment by the company.

The Court: The reason for that is one of these two gentlemen said if he did they would call a strike.

Mr. Krieger: They also said a strike was called and a stoppage did ensue. That is what they said.

Now, if the Court please, Section 659 of Title 18 goes into—I just read "Conspiracy—" goes into any theft that may take place or had taken place in a conspiracy to commit the act. I read "Conspiracy" and the act itself, and I say under that statute these people, if (65) it is contended that there were these thefts going on, that there was a conspiracy to commit thefts by keeping a watchman off the waterfront who is not a member of their union, who they didn't control, therefore, Markley or someone who they didn't control would be taken off the waterfront and they would continue in a conspiracy and continue the thefts. That lies in that statute, and it is not necessary to substantiate every element [fol. 155] of every offense: It is sufficient that any single incident could be a part thereof or could be a link to it in any manner. That is statute number one. There is an indication in that respect, too.

Then we have Title 18, Section 1951, "Interference with commerce by threats or violence." There is no question, if your Honor please, this is commerce. That is admitted here. That is not in dispute. This is a waterfront; this is a pier; this is a wharf; engaged in interstate commerce. No question about that. If there is, we will produce proof immediately, and I am sure they will admit that is so.

(66) "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce by robbery or extortion or attempts or conspires so to do or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section," shall be guilty. Now, that is statute number two.

As I pointed out, any one of these acts could be an element of it, could lead to and become a part of it.

The Court: I don't recall that these respondents were charged with any of these offenses.

Mr. Krieger: Oh, no, your Honor. They were not charged with the offense itself, but it is not necessary to charge the offense in so many words. It is not necessary

to do so for an individual to use privilege. It is sufficient for an individual—an individual had a right, statutorily by the State of New Jersey, constitutionally by the 14th Amendment, of due process today to assert privilege if anything could be an element of any crime, and (67) they say it was illegal coercion, if your Honor recalls the words from a quotation by them. Not our words; theirs.

Now, if your Honor please, consequently, if you take their facts, as they state them, you have this: You have Section 4 of the Federal Code, United States Code, Annotated, Title 18, which states:

[fol. 156] "Whoever having knowledge of the actual commission of a crime cognizable by a court of the United States conceals and does not as soon as possible make known the same—" that is the present statute, if your Honor please. They say an illegal act and they want to know about it, and if they don't get the information and they had the information and do not disclose it, they are guilty of this act for not having disclosed it immediately as required by this Statute.

And we have one that is apparent—though by any language, sir, it would be difficult to escape—and that is Title 18, Section 241:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any (68) citizen in the free exercise or enjoyment of any right or privilege secured by him by the Constitution or laws of the United States, or because of his having so exercised the same," it constitutes a criminal offense.

In other words, in this instance the civil rights statute, where a person has a right to work, their interference with this individual's right to work in this instance constitutes a violation of the civil rights of this individual.

Their answer to that—they regognize that without even bringing it to their attention. They say there is a guarantee of the right to work. There is no question about that. Every person is guaranteed the right to work. The United States has passed a Statute to make sure there is no interference with that right to work.

People can't come upon a pier and say, "Judge Smith, Harold Krieger, you can't come upon this pier. If you do

we'll take everybody off." They say in the papers "to discharge him." They say "interference." That was in their moving papers, to force them, to (69) coerce them, to illegally do that. That constitutes a criminal offense.

I respectfully submit I didn't find it necessary to go any further because there are so many things that could lead to possible incrimination in this particular case where we [fol. 157] are engaged in a wharf, a pier, where so many acts have been passed relative to it. It leaves no room for argument, because we have a general provision that is simple. I have cited it, and that is the one of interstate commerce under the Interstate Commerce Act. Anyone who interferes with the free movement of commerce between states, anyone who interferes with interstate commerce, shall be guilty of a criminal offense under the interstate commerce laws. That is as simple as it has become. We can't escape from it. There is no question that the stoppage constituted interference with interstate commerce, from what they say.

I respectfully submit that we cannot argue that there is not a possible incrimination here, we cannot argue that there is not a force, we cannot argue that there is not (70) some link, we cannot argue that the immunity is not as broad as the privilege. We must admit under these circumstances these people could possibly—not they must—they could possibly—those are the words, could possibly be involved or become involved by their testimony if called upon to testify and lead to other testimony, if your Honor please, in the link of the chain.

Now, I respectfully submit that it becomes quite apparent that these defendants have not had granted to them or could have granted to them the type of immunity that would take away from them the right to use privilege, which in this instance the Waterfront Commission has admitted they had a right to use, because if they don't make it clear in their moving papers, or if it seems unclear in their moving papers, I must respectfully request the Court for leave to put in affirmative testimony showing it. I think it is shown, but if the Court feels otherwise or if they contend otherwise, affirmative proof will be offered.

The Court: I want to make it perfectly (71) clear now I will receive no proof from any side on this question.

Mr. Krieger: That means your Honor would not take any testimony?

[fol. 158] The Court: That's right.

Mr. Krieger: I respectfully submit that it must appear clear from the moving papers that there is sufficient to connect or show that these people could possibly be involved in a criminal offense.

The Court: You are entitled to draw any conclusion you want to. The Court will draw its own.

Mr. Krieger: Otherwise, I would ask the right to put in testimony and proof, accordingly.

Now, if your Honor pleases, if I have succeeded in demonstrating to the Court the point of the Statute, of the privilege, the point of the immunity not being co-extensive, the point of the fact that there are implications here in this case, that the record is sufficient, as the Statute provides—if I have succeeded in doing that, that could terminate this matter.

. . . . . .

[fol. 159] I have covered it very briefly, and again I repeat as distinctly as I possibly can that there is a failure [fol. 160] to apprise, that (75) there is a failure to show purpose, there is a failure as required by all of the Federal cases in this investigation. There is a complete failure in that respect.

In fact, throughout the testimony, your Honor will note there was constant questioning of the interrogator as to the purpose and pertinency. There is a constant attempt to elicit information. There is a constant demand for information relative to the matter, so the defendants could properly be advised as to their rights. That was not forthcoming at all during the entire interrogation.

. . . . . .

I respectfully submit, also, Elkins versus United States, 364 U. S. 206, the Feldman case, as cited heretofore, and Mapp versus Ohio, supra.

[fol. 161] I don't know whether it is necessary to (77) take any time on a point they raised in their brief last night, in which they try to contend that this so-called immunity Statute must be interpreted as New York courts have interpreted it. I respectfully submit that under the

McNamara case now there can be no question that this is a State agency, that under the McNamara case now that this body, this body politic and corporate, is subject to the rules of evidence of the State of New Jersey, and this is a rule of evidence they can no longer escape, as they contended in the Supreme Court that they have sovereignty unto themselves, that they have a law unto themselves, that they have a right in this instance to grant immunity unto themselves regardless of the law of the State of New Jersey. They are subject to the rules of evidence. They are subject to our Statutes, in this instance, the evidence act. They are subect to it. The fact they can't grant Federal immunity has no bearing to the exercise of the use of privilege by the defendants in this instance when the Statute guarantees and grants them such a right.

(78) Other than the offer of proof I have indicated is necessary, I would like now to conclude my argument, because I have taken a great deal of time of the Court. The Court has been most patient with me. I have left out a great deal of my argument, but I don't want the record to show that I haven't urged it and, therefore, to save some time in this matter, I urge, if it is agreeable with counsel, that my brief as submitted and the statement of jurisdiction as submitted to the Court here and the other papers become part of this record as such, as if it had been stated orally.

Is that agreeable?

Mr. Malchman: What papers?

Mr. Krieger: My moving papers.

Mr. Malchman: I'm not sure—

Mr. Krieger: You received copies of them.

Mr. Malchman: You want me to agree to what?

[fol. 162] COLLOQUY

Mr. Krieger: That they are part of this record.

Mr. Malchman: Aren't they?

Mr. Krieger: I'm asking the Court to—

(79) Mr. Malchman: What papers?

Mr. Krieger: My original brief, my supplemental brief, the McNamara case which I submitted to the Court, and the statement of jurisdiction.

Mr. Malchman: I have no objection.

Mr. Krieger: And they will be considered part of this record as such.

Mr. Malchman: I have no objection.

The Court: They may be made part of the record, and I assume the petitioner would want to make his briefs a matter of record, too.

Mr. Malchman: Yes, your Honor.

The Court: Any objection to that?

Mr. Krieger: No, your Honor.

The Court: They may be marked.

Mr. Krieger: I think your Honor ruled your Honor is not permitting any evidence or proof?

The Court: Yes.

• • • • • • •

[fol. 166]

ARGUMENTS ON MOTION TO HOLD DEFENDANTS IN CIVIL AND CRIMINAL CONTEMPT

• • • • • • •

Mr. Malchman: If your Honor please, with respect to the contention by the defendants that they have not been granted immunity from Federal prosecution, I simply answer as a matter of law they are not entitled to it, but I will go beyond that answer, which I say is a (87) completely independent and self-sufficient answer to the point that there has been no and can be no showing, reasonable showing, of apprehension of prosecution under Federal law in this proceeding. With respect to this point, I would like to suggest that the defendants are playing fast and loose with this Court with regard to this matter.

For example, in the original contempt that we instituted in this court before your Honor, William Murphy, one of the defendants in this proceeding, swore to the truth of the following statement by his attorney, Robert H. Wall, and this statement appears on pages 7 and 8 of the Commission's reply memorandum, as follows:

"In conclusion, it is apparent that a labor dispute exists under full control of the United States Government National Labor Relations Board, and to allow the Waterfront Commission of the Port of New York to intermeddle would

lead to the impairment of the existing contractual relationship between Labor and Management."

[fol. 167] So that we have one of the defendants in (88) the first contempt proceeding saying that there was nothing but a labor dispute, pure and simple, involved, and we didn't have any jurisdiction over that labor dispute because the National Labor Relations Board had jurisdiction. Now when we give him immunity from prosecution and after your judgment of contempt has been affirmed by the New Jersey Supreme Court, he comes back and speaks out of the other side of his mouth—not himself but through his counsel—and says there are all kinds of criminal activity involved herein and he might be incriminated under various Federal penal laws.

The same is even more true with respect to the defendant John Moody, who in his affidavit even denied that there was a work stoppage to force Mr. Markley off the piers of the American Export Line.

In this connection, with respect to the fact that I submit that the defendants are playing fast and loose with this Court and are taking expedient positions according to the record that they desire, the Supreme Court of New Jersey in a very recent decision has (89) stated and has held very clearly that before a defendant can avail himself of privilege against self-incrimination that defendant or witness must himself take the stand and swear under oath, under pain of perjury, that he fears that he may be incriminated if he testifies and he must pinpoint the area of fear of criminal involvement, so that the Court may intelligently rule upon this claim of incrimination, and this was held, your Honor, in the case In re Boiardi, which appears in our brief, reply memorandum, at page 4, and from which the following quotation appears, but before I read the quotation, I would just like to point out to your Honor that in that case—

• • • • • • •

[fol. 170] The Court: Do you desire to be heard further, Mr. Krieger?

Mr. Krieger: Yes.

To start with, counsel speaks about contradictions. I think if there has been any contradiction it has not been on the part of the defendants. As far as argument is concerned there have been consistent arguments.

Counsel in one breath says, "Yes, we can grant immunity." In the second breath he admits the immunity does not go to the Federal and they haven't got a right to do so. Practically, those are his words, in essence.

Then he says the reason why is because there has been no pinpointing of the area of possible incrimination. No pinpointing. I thought I had made myself quite clear, clear (95) as one could make himself, and said if there was any question about it we would have testimony to that effect and they would take the stand and indicate that they felt incriminated, and they would do so. I made that clear, and I make it clear again for the purpose of the record.

Mr. Malchman: If the Court please, is this an argument?

Mr. Krieger: Let me finish.

The Court: Please don't interrupt.

[fol. 171] Mr. Krieger: You've done that many times. Don't do it today.

The Court: I might say that this is the first time that I heard counsel—

Mr. Krieger: I'm not talking about today, in this court. In other courts. We have been in many courts in various cases and we know each other well.

I say that offer has been made. It is up to the Court now, if there is any question. I had argued I felt the record was sufficient to indicate from the Nusbaum case, and the Boiardi case, it appears on its face there is a distinction in this case from the Boiardi (96) case by far. I spent a great deal of time reading from the Boiardi case. The Boiardi case has no relationship here because in the Boiardi case it did not appear upon its face that there could be any kind of incrimination. In fact, the contrary appeared. The contention was perjury, not anything else. But, of course, if the record was going to be settled, it had to be settled by the testimony.

I say here if there is any question about that, the offer is made. I want that clear. I don't want anybody to say

we didn't pinpoint it because we are ready to do so. I put that on the record, as part of the record in this case.

* * * * * * *

[fol. 175]

ARGUMENT ON MOTION OF DEFENDANTS FOR JURY TRIAL

* * * * * * *

Mr. Krieger: Yes, but I am attempting to pinpoint one item at a time of the argument before the Court—subsequent to an order made by the Court compelling the witness to answer. At the time the question came before the Court that the witness be compelled to answer, that argument was not made to the Court. It was only subsequent, after the appearance before the grand jury and after the order compelling him to answer that argument for the first time was made about the exercise of the use of privilege. Here, the first time after these people were ordered to answer they have exercised their privilege. It appears clearly and convincingly.

As I said before, I made the offer. I repeat my offer heretofore made so there can be no question of fact. I don't want to leave a question of fact open in this case.

I respectfully submit there should be a (104) dismissal.

The Court: Gentlemen, are there any other motions? As to the respondents' motion to quash the subpoenas, I suppose the same arguments are applicable?

Mr. Krieger: Yes, they are applicable to both.

The Court: And those two motions were consolidated.

Mr. Krieger: Yes, your Honor.

The Court: The next defendants' motion that I have is a demand for a jury trial in these proceedings for civil and criminal contempt.

"If the Court denies the motions for contempt or otherwise disposes of those motions favorably to the defendants on any of the grounds of law asserted in the defendants' answer to said motions, this demand for jury trial will become inoperative. It is the defendants' intention to request the Court to dispose first of all such issues of law, and further, if the motions for contempt are not denied on such [fol. 176] grounds of law, it is defendants' further intention to move that the trial of the issues of fact herein shall

be deferred pending (105) completion of the discovery proceedings which the defendants shall seek herein pursuant to their motion for bill of particulars and their interrogatories."

I will hear you on that motion at this time.

Mr. Krieger: On the question, if your Honor please, for hearing of this matter on the criminal and/or civil contempt, this being an application for both, and trial thereof, I respectfully contend, under the rules of practice of civil and criminal contempt, respectively, provided for in R. R. 3:8 and R. R. 4:87—Rules of Criminal Practice, Part III of the Revised Rules especially provide for a bill of particulars. R. R. 3:4-6. On the face of the latter Rule, and in view of the fact that said Rule is contained in the same "Part" of the rules as is R. R. 3:8 (Criminal Contempt), a defendant in a proceeding for criminal contempt is entitled to move for a bill of particulars under R. R. 3:4-6. The latter rule refers not only to the "indictment" but also to the "accusation." The "accusation" in our case consists of the Commission's motion papers. Within the meaning of R. R. 3:4-6, this (106) "accusation" is not sufficiently specific to enable the defendants to prepare their defense. Our reasons for contending that the "accusation" is thus inadequate are set forth herein.

Under the closely comparable Federal Practice, it is settled that a defendant in a criminal contempt proceeding is entitled to move for a bill of particulars, the leading case being United States versus Balavan, 26 Federal Supplement 491, 498 (N. D. Ill. 1939), where the Court said:

". . . the analogy between a proceeding in criminal contempt and an indictment for a criminal offense is so compelling as to leave no doubt that, in a proper case, a bill of particulars may be exacted . . ."

In accord: United States versus French, 9 Federal Supplement 30-31 (W. D. Mich. 1934); Fox versus United [fol. 177] States, 77 Federal 2d 210-211 (C. C. A. 4 1935); Conley versus United States, 59 Federal 2nd 929, 935 (C. C. A. 8 1932).

As regards the civil contempt aspect of the Commission's motions for contempt in this case, we maintain that defen-

dants are entitled to pretrial discovery by all appropriate (107) avenues made available under Part 4 of the Revised Rules of Civil Practice in the Superior Court. As above mentioned, the contempt proceedings herein insofar as they arise on the civil side must be conducted pursuant to R. R. 4:87; indeed, it would appear that the alleged contempts herein insofar as they arise on the criminal side also bring into play R. R. 4:87, inasmuch as the latter rule deals with both civil and criminal contempts. No reason is apparent to us, and we do not see how any could be suggested, that would justify denying to a defendant in a civil (or a civil and criminal contempt proceeding) under R. R. 4:87 the rights of pretrial discovery which are provided generally for all proceedings under Part 4 of the Revised Rules. In this case, the pretrial discovery which we seek on the civil side is by way of interrogatories.

In other words, in civil actions we are entitled to interrogatories. In criminal cases we are entitled to a bill of particulars. Therefore, that is the reason for having both.

The Court: You also have a motion to compel answers to interrogatories.

(108) Mr. Krieger: Your Honor, at the outset, your Honor recalls, your Honor said at the outset that your Honor would consider as part of the discovery argument today both the interrogatories as well as the bill of particulars. Although we didn't include our interrogatories with a notice of motion, we made the same returnable, and the notice of motion which your Honor just read from applies to both the interrogatories and the bill of particulars. We didn't separate them. We included them in the one motion paper.

The Court: Well, the interrogatories you seek are identical with the bill of particulars.

[fol. 178] Mr. Krieger: Identical, sir. I say very frankly the Court may determine if they answer the interrogatories they don't have to answer the bill of particulars, because the interrogatories are under oath. They don't need to answer the bill of particulars because the interrogatories cover it.

On the other hand, if your Honor should find there is no criminal contempt involved at all, then under the civil contempt the bill of (109) particulars comes into play, or

vice versa, and I say in the moving papers that a single set of answers to either one will suffice, will cover both discovery requests.

Why are we entitled to such discovery? The New Jersey Rules of Evidence adopted in 1960 provide (N. J. S. A. 2A:84A-32, Rule 40, para. (2)) that:

"(2) If a witness refused to answer a question, under color of a privilege claimed pursuant to Rules 23 through 38, after the judge had ordered the witness to answer, and a contempt proceeding is brought against the witness, the court hearing the same shall order it dismissed if it appears that the order directing the witness to answer was erroneous."

The defendants herein contend that the Commission's orders of immunity directing them to answer were erroneous within the meaning of the above quoted statute and Rule, and I say, your Honor, at this time it apears so conclusively that it is erroneous that the Commission itself at the time of the hearing never ruled that the defendants were entitled to immunity insofar as the 1960 law involving a (110) Federal crime or Federal offense. They were under a misapprehension of the law. They felt the rule existed and was not changed and that the cases which held that there was no necessity of immunity being granted as far as Federal offenses still persist, and, first of all, they weren't aware of the 1960 Statute, because no motion was made. In fact, they said, "We can't grant you Federal immunity." So they never ruled on it themselves. They erroneously [fol. 179] made that order, because I am sure no judicial body could have made an order under those circumstances to answer.

The immunity orders were erroneous for the several reasons argued heretofore, and we have separate defenses in our answer. Your Honor will take into consideration there has been an answer filed in this cause creating these issues and setting up affirmative defenses.

In other words, if we are correct in our argument that the Commission pressured and maneuvered the defendants into an alleged contempt by conducting the interrogation and the proceedings for conferral of immunity in a (111)

manner contrary to due process or in violation of Statute, then the defendants are not in contempt because the orders directing them to answer are erroneous. In nearly every facet of this case a full and fair determination as to the validity or erroneousness of the orders to testify entails a substantial further judicial inquiry of fact.

There is no question that this is a trial or a trial can be set by the Court, and if we are to have a trial we are surely entitled to be prepared for such a trial. Issues are presented here which are issues of law. Then we get down to issues of fact, because the Court must determine whether or not there was a criminal contempt. The Court must determine whether or not there was a civil contempt. The Court must interpret the question of intent, which is a factual situation or a jury question.

Therefore, if your Honor please, pretrial discovery is permitted, just as in the McNamara case, if you notice how far our Supreme Court goes now. They have gone further than in the Johnson case. Originally, in the (112) Johnson case they went into the examination by pretrial discovery of a statement given by an individual, right of examination, and they specifically say in any criminal case there may be pretrial discovery and you can have pretrial discovery in a criminal case, and the McNamara case clears that up completely now, because the reason for it is there can be nothing [fol. 180] hidden, all facts will appear, and the case will be plainly and clearly before any court, and the defendant will not be deprived of any right.

That is the reason why I say we are entitled to this, and I say the Rules provide for it. I don't want to take any further time of the Court, because the Rules provide for it. I have not been served with any brief by my opponents on this question at all. I have received no brief from them at all. I submitted our brief way back last Thursday, five days ago, as required by the Rule. I have received no answering brief at all. I don't know what their argument may be in answer. I don't know if they want to contend we are not entitled to it or not. I don't know.

(113) As far as the right to trial by jury, that also is provided by the Rules, sir.

I have nothing further.

The Court: It is a matter of discretion with the Court.

* * * * * * * *

[fol. 182] Mr. Malchman: I hope your Honor will bear with me just a minute. I don't want to impose upon your Honor. Just for the purpose of clarity of the record, I am sure that your Honor is not saying to counsel for the defendants that he will not hear the defendants state under oath that they fear incrimination under any law.

The Court: I have made it very clear that this Court is not going to receive any testimony. I'm going to decide it on the record as I've got it.

We will carry this over until 12 o'clock tomorrow morning, gentlemen. We will recess until 12 o'clock tomorrow morning.

[fol. 183] COLLOQUY

(118) November 22, 1961.

(Appearances the same with the exception of Mr. Pin, absent.)

The Court: The Court has reconsidered the offer made in behalf of the respondents, Messrs. Murphy and Moody, to offer testimony. I concluded that I will receive such testimony now, if you desire to offer it, from those witnesses, or respondents.

Mr. Krieger: Of course, this will be in a very limited sense and for a very limited purpose. As I understand it now, the offer is being accepted only to pinpoint the Federal involvement or the Federal statute, the Federal crime, they could possibly be involved in and the reasons therefor in that respect.

The Court: That's right.

Mr. Krieger: And only insofar as the incrimination, because the Boiardo case says specifically it must be specifically limited.

The Court: That's right. The Waterfront Commission has also in their brief and in their argument yesterday, oral argument, they seemed to join with you in saying it was (119) proper that testimony should be received. They have no objection to it.

Mr. Krieger: The reason why I offered it—I said only in the event that the Court felt the record was not complete enough in that respect, and for that purpose and that purpose only.

The Court: Well, it is for you to determine, counsel. You made the offer and the Court now grants you permission to do so.

Mr. Krieger: Your Honor probably doesn't follow me. I said if the record itself didn't disclose the Federal offenses, the possibility of Federal offenses and incrimination, therefore, under the circumstances, to complete the record in that respect and pinpoint it, it is being offered for that purpose and that purpose only.

[fol. 184] The Court: You told me that this morning and you told me that yesterday, and that is why I say it is being accepted.

---

(120) William Murphy, sworn.

Direct examination.

By Mr. Krieger:

Q. Mr. Murphy, you have heretofore been subpoenaed as a witness to testify before the Waterfront Commission of New York Harbor and you appeared in response to such subpoena; is that correct?

A. That's right.

Q. And, Mr. Murphy, you did exercise the right of privilege under the statutory provisions of the State of New Jersey and the Constitution of the United States of America; is that correct?

A. Yes.

Q. You exercised the privilege and you stated in your answer thereto that you refused to answer because it may tend to incriminate you, the answers may incriminate you; is that correct?

A. That's right.

Q. Mr. Murphy, you were made aware of the fact that this investigation was to investigate crimes that were being committed on the waterfront in the City of Hoboken, County

of Hudson, State of New Jersey, on or about May 20, 1960; is that correct?

A. That's right.

Q. Or May 16, 1960; is that correct?

A. That's right.

(121) The Court: That wasn't the only purpose of the investigation.

Mr. Krieger: That was one of the purposes.

The Court: I wish you would say so.

Q. Another purpose, as I understood from the investigation as indicated in the questioning, Mr. Murphy, was the fact that it was the contention of the Waterfront Commission that a chief security officer—another purpose of the investigation, as I understand it, was that it was the desire [fol. 185] of you and others in a combination or group to cause a work stoppage to prevent an individual from employment and secure his discharge from employment, namely, one Markley; is that correct?

A. That's right.

The Court: Will you please—

Q. As I understand it further, that the Waterfront Commission had contended that the watchmen were under the jurisdiction of the Waterfront Commission as a result of thievery and other acts—

Mr. Malchman: I object to that. We have not made such a contention.

Mr. Krieger: I'll read it in the record. I'll read from the record, paragraph 3 of the affidavit of Mr. Sirignano, on page 2, that the ILA controlled the—

(122) The Court: What affidavit is that?

Mr. Krieger: Mr. Sirignano, general counsel of the Waterfront Commission.

The Court: What is it in reference to?

Mr. Krieger: Stating the reasons for this investigation, your Honor.

The Court: What was the affidavit in connection with?

Mr. Krieger: An affidavit in connection with this situation here in this matter.

The Court: That is what I want to know.

Mr. Krieger: In this matter here, filed in this cause. "—was that the ILA controlled the Port Watchmen's Union; that the close connection between the watchmen's union and the ILA resulted in watchmen being discouraged from, and even reprimanded for, reporting thieves; and that the ILA actively opposed efforts by steamship companies to improve the watchmen system."

Mr. Malchman: If the Court please, that paragraph is a quotation from the Crime Commission report in 1953 and [fol. 186] it was only in the affidavit to show why, in the first instance, legislation was passed requiring port (123) watchmen to be licensed by the Commission. However, it was never stated in any of the moving papers before this Court that this investigation by the Commission was for the purpose of investigating thievery on the waterfront. Rather, it was specifically stated that the purpose of this investigation was for the purpose of inquiring into a work stoppage to keep one James Markley off the piers of the American Export Lines in Hoboken.

The Court: Counsel, that is in an affidavit filed in the present petition. You have got to confine your questions to what was before him at the time he claimed his immunity. This is subsequent to it. This is only filed lately. I'll not allow it.

Mr. Krieger: For the purpose of the record, may I point out to the Court, as I have indicated heretofore in my argument—

The Court: Counsel, I don't want reargument. I've had all the argument I want. I'm not going to have any more argument. It's repetitious. I've had plenty of it.

Q. Mr. Murphy, the American Export Lines owns or (124) operates the pier in Hoboken?

A. That's right.

Q. That pier in Hoboken, is that engaged in interstate commerce?

A. That's right.

Q. Now, Mr. Murphy, in the exercise of your statutory and constitutional rights, is there any question in your mind as to whether or not you could possibly incriminate yourself by any evidence at all?

A. I could.

Q. What crimes could you possibly have been connected with as to result in a Federal charge against you or others, in combination with others, in conspiracy with others?

A. That the American Export Lines is subsidized by the [fol. 187] United States Government and could be sued, the union could be sued, and I could be sued, personally. Interstate commerce freight that was held up during the strike would bring in the Federal Bureau of Investigation, and the rights of watchmen working on the piers that could be in cahoots in pilferages, and stuff like that.

Q. Also, were you aware of the fact it was the contention of the Waterfront Commission that you tried, and others together, in combination and conspiracy, to keep an individual from employment on the piers, namely, Mr. Markley?

A. That's right.

Q. And was that a reason for your exercising that (125) privilege, yourself?

A. That's right.

Q. You have been made aware of the fact, Mr. Murphy, have you not, that this would constitute Federal offenses or could possibly involve Federal offenses; is that correct?

A. That's right.

Mr. Krieger: That's all.

Cross examination.

By Mr. Malchman;

Q. Now, Mr. Murphy, were you a respondent in a contempt proceeding instituted in this court in or about May of 1960?

Mr. Krieger: Just a minute. I object to the question, if the Court please. That is not the purpose of this witness that is being called here. The question is as to his examination at this time, not what happened in an examination in May of 1960.

Mr. Malchman: I ask that it be taken subject to connection.

Mr. Krieger: I object. It can't be connected up, and it is very limited, in accordance with the Boiardo case.

The Court: I'll allow it. It is proper cross-examination on the question.

[fol. 188] (126) Mr. Krieger: It's not cross-examination.

The Court: I say it is, counsel. I have ruled it is proper cross-examination.

Mr. Krieger: Your Honor please—

The Court: It doesn't need to be connected up. If you read the pleadings you would know what it is about.

Mr. Malehman: That's right.

Mr. Krieger: If your Honor wants to consult with counsel, I would like an opportunity.

The Court: No, I will have no consultation with counsel in this court on this question, and I will allow it, and I direct the witness to answer the question. I will have no further delay. Let's get on with this.

Read the question.

(The reporter read the last question.)

A. I stand on my constitutional rights on this question.

The Court: You don't stand on any constitutional rights on that question. I order you to answer that question.

Mr. Krieger: Answer it.

The Court: I'm not so stupid, when I sat here and presided in that case, that I don't know you were here, and you know you (127) were here.

Mr. Krieger: The only question is the opening of the door. That's the only question.

The Court: I want you to answer it yes or no.

Mr. Krieger: Answer it yes or no.

A. Yes.

Q. And in that contempt proceeding instituted against you by the Commission, did you swear to the truth of a statement executed by your attorney then representing you, Mr. Robert H. Wall?

[fol. 189] Mr. Krieger: He can't answer that. How does he know what the statement is, your Honor, unless he is advised?

The Court: Sustain the objection.

Q. Mr. Murphy, I read to you a paragraph from a statement by Mr. Robert H. Wall which appears in the printed

record of the first proceeding, in which he states the following—

Mr. Wall: I object to that question being asked on this ground: That affidavit was put in the record as to one subject that was being contested at that time, the jurisdiction of the Commission, and the affidavit in no wise encompassed the privilege or (128) concerned this immunity, and it is absolutely irrelevant at this time.

The Court: I'll allow it.

Q. In which your attorney, Mr. Wall, made the following statement: "In conclusion, it is apparent that a labor dispute exists under full control of the United States Government National Labor Relations Board, and to allow the Waterfront Commission of the Port of New York to intermeddle would lead to the impairment of the existing contractual relationship between labor and management." Now, Mr. Murphy, did you swear to the truth of that statement by your attorney, Mr. Wall?

Mr. Krieger: How could he swear to the truth of a statement made by an attorney, your Honor? That is improper. He is quoting from a statement made by a lawyer, not by a witness. The most that could be said is that a witness or an individual in litigation may have an affidavit insofar as to his knowledge or information or belief. In other words, first a complaint is made and the complaint is signed by an [fol. 190] attorney, and affirmation by the party to the action as to information and belief, and that is all that could be involved, but not an affidavit by this individual, and (129) he is not reading from a statement by this individual. He is reading from a statement made by an attorney in argument of a question before a court of jurisdiction.

The Court: Are you reading from an affidavit?

Mr. Malchman: I am reading from a statement by Mr. Wall which was sworn to by Mr. Murphy. He swore to the truth of the facts set forth in this statement by Mr. Wall.

Mr. Krieger: That is not a fact.

The Court: How did he swear to it?

Mr. Malchman: He said as follows, and this appears in the printed record:

"William Murphy, of full age, being duly sworn according to law, upon his oath deposes and says:

"1. I am Business Agent of Local 2 of the International Longshoremen's Association.

"2. The facts and matters set forth in the foregoing Answering Statement are true, to the best of my knowledge and belief."

That is the answering statement of Mr. Wall.

"Signed, William Murphy.

"Subscribed and sworn to before me this (129A) 25th day of May, 1960, Joan M. Hogan, Notary Public, New Jersey."

So he swore in the first action that we instituted to the truth of that statement by Mr. Wall.

Mr. Wall: May I say, your Honor, this is an affidavit in answer to an affidavit filed by the Waterfront Commission and it was absolutely pointed at that affidavit and did not encompass all this man's rights. Therefore, it is highly improper at this time to try to impress upon the Court that this affidavit was made to answer everything that is involved in this issue today, and that is my objection.

[fol. 191] Mr. Krieger: I make an additional objection that this is an answer filed, an answer filed by an attorney in which an acknowledgment appears thereon, an affirmation appears in the cause, by information and belief, and if Mr. Malchman wishes to examine on that information, the man to examine would be Mr. Wall and not Mr. Murphy.

Mr. Malchman: We have this situation. We have a sworn statement on file in this (130) court that the labor dispute here was nothing but a labor dispute within the cognizance of the National Labor Relations Board, and all I am asking this witness at this time is whether he swore to the truth of that statement. I think I am entitled to it in view of his subsequent inconsistent statement that he thinks he will now be incriminated.

Mr. Wall: This is not inconsistent.

Mr. Malchman: This goes to the good faith of his plea, your Honor.

Mr. Wall: That is exactly the point I am trying to make before this Court. This statement that was made was made to answer an affidavit filed by Mr. Sirignano and was not made to encompass all this man's rights. It was not made to encompass every fact in the case. It was narrowed down to the issue that we were arguing before this Court concerning a labor dispute, to show that a labor dispute is under the control of the NLRB and under a pre-emption, that the Waterfront Commission did not have any jurisdiction, and we did not encompass the rest of this case. That was our point, and in accordance with the rules, we (131) narrowed it down to the point. I think it is highly irrelevant, highly improper, and highly inequitable to try to narrow that down at this point.

[fol. 192] Mr. Krieger: And the Court held it was a labor dispute, so that issue was disposed of as far as jurisdiction is concerned.

Mr. Malchman: We have a sworn statement by this man as to what the work stoppage was about in 1960. He now comes on the stand and says he fears he may incriminate himself.

The Court: This man is under cross-examination. It is perfectly proper. I will allow it.

Mr. Krieger: If I may be heard—

Mr. Malchman: I think the Court has ruled.

Mr. Krieger: In accordance with the Rules, I think that this man's cross-examination is narrowed down to the issue that was brought out by direct examination. If that be so, nobody said anything about an affidavit on direct. I think he is going outside the bounds and limits of proper cross-examination.

The Court: It is proper cross-examination.

(132) Mr. Krieger: May I point this out? The Supreme Court was very careful in this type of examination and said it must be limited and very narrow and, if the Court please, only to pinpoint the offenses, only to pinpoint the offenses, and to compel this witness to go into other matters, other than pinpointing the offense itself, would be—

The Court: This is offered to affect his credibility as to his intention.

Mr. Malchman: That is right. That is what I am trying to do.

The Court: Perfectly proper cross-examination.

Mr. Krieger: Excepting this: Credibility is not an issue in this type of examination.

The Court: Of course, it is. Every witness who is called to the stand, his credibility is in issue.

[fol. 193] Mr. Krieger: The question is whether or not there exists such offenses that he could possibly be incriminated in; whether there exists such offenses, not whether he was there or not.

The Court: Whether he claims his immunity (133) on account of the fear of those offenses.

Mr. Krieger: Yes, that's right, and, consequently, if your Honor please, not what the facts were, not what the facts are. None of the facts can come into play at all. To do so would deprive him of the provision of the statute of using privilege.

The Court: I'll allow it.

Mr. Wall: May I just state one more thing? The only point here on cross-examination, the only credibility to be attacked is as to whether or not he actually believes that he will subject himself to a Federal offense.

Mr. Krieger: Or a possibility.

Mr. Wall: Or if there is a possibility. There is nothing else offered here. Why attack credibility on something that happened five years ago?

The Court: I will allow the question.

Read the question.

(The reporter read the pending question.)

Mr. Wall: May I say one more thing? Don't you believe that the proper way to do this is show him the original statement and ask him if that is his signature? How can (134) this man remember what he did three or four years ago? Don't you think the—

The Court: Counsel, you are very clever. You are giving him the answer.

Mr. Wall: No. I'm not giving him the answer.

The Court: You just gave him the answer. I have allowed the question.

[fol. 194] Mr. Krieger: May I show you something?

The Court: If you want to read me something, read it to me. After the question is answered you can read it.

A. Your Honor, I don't recall signing any statement.

Q. Is it your testimony that you didn't sign any statement or you don't remember?

The Court: Are you speaking of an affidavit or a statement, counsel?

Mr. Malchman: I am speaking of an affidavit.

The Court: Why don't you say so?

Q. Is it your testimony that you never executed an affidavit or that you don't remember whether or not you executed an affidavit?

A. I don't recall.

Mr. Malchman: I would like to have the production of the papers from the first proceeding, (135) your Honor.

The Court: I don't know whether it is in my file or the County Clerk's file or whether he has any other file. Maybe it's in Trenton, for all I know. I don't know where they are.

Mr. Krieger: While counsel is looking for it, may I read this, sir?

The Court: What are you reading from?

Mr. Krieger: I am reading the Supreme Court's opinion in re Boiardo.

Mr. Malchman: I have it here, your Honor.

Mr. Krieger: The Court asked me to read—

The Court: I've read the Boiardo case so often.

(To Mr. Malchman): Are you offering that?

Mr. Malchman: I would like to have this marked for identification, please.

[fol. 195] The Court: Are you offering it in evidence or for identification?

Mr. Malchman: For identification.

(Document referred to marked Exhibit C-1 for identification.)

Q. I show you, Mr. Murphy, what purports to be—

The Court: Please refer to the marking (136) on your exhibit in your inquiry.

Q. I show you Commission's Exhibit Number 1, Mr. Murphy, which purports to be an answering statement of your attorney, Mr. Wall, and I also show you annexed thereto what purports to be—

Mr. Wall: I object to "what purports to be." Who made the statement?

The Court: Counsel, will you please wait until I have a question before you interpose an objection? How can I pass on a question when I haven't got a question?

Mr. Wall: He said it is to the other question.

The Court: Will you please be seated?

Q. —purports to be an affidavit executed by you. Now, Mr. Murphy, I am going to ask you to read this—

The Court: Please show it to him and ask him if that is his signature.

Q. Is that your signature, Mr. Murphy?

A. It is.

Q. Would you hold the exhibit, please? Does that refresh your recollection, Mr. Murphy, as to whether or not you executed an affidavit in the first contempt proceeding instituted by the Commission against you?

Mr. Krieger: If the Court please, I (137) object. That [fol. 196] is not an affidavit. That is an affirmation to an answer, sir, and therein lies a distinction and difference.

The Court: What is it, counsel?

Mr. Malchman: It is an affidavit.

The Court: What is this statement?

Mr. Malchman: It is an affidavit.

Mr. Krieger: It is an affirmation, is it not, Mr. Malchman?

Mr. Malchman: No, it is not.

The Court: Will you read it to me, counsel, what it is?

Mr. Krieger: Read the title of the paper.

The Court: Read me what he signed, the whole thing.

Mr. Malchman: "State of New Jersey, County of Hudson, SS:

"William Murphy, of full age, being duly sworn according to law, upon his oath deposes and says:

"1. I am Business Agent of Local 2 of the International Longshoremen's Association.

"2. The facts and matters set forth in the foregoing Answering Statement are true (138) to the best of my knowledge and belief.

"Signed, William Murphy.

"Subscribed and sworn to before me this 25th day of May, 1960, Joan M. Hogan, Notary Public of New Jersey."

Mr. Krieger: May I say, if your Honor please, so the record is clear, this is an answer filed by an attorney and what counsel is reading from is an affirmation.

The Court: Do you know an affidavit when you see it, counsel?

Mr. Krieger: Sure, I do.

The Court: Is that an affidavit that he just read?

[fol. 197] Mr. Krieger: It is an affidavit of affirmation.

The Court: Is that an affidavit he just read?

Mr. Krieger: It is an affidavit of affirmation.

The Court: That is all I want to know.

Mr. Krieger: Of affirmation.

The Court: I don't know what you are talking about. I don't know what "affirmation" is. That is an affidavit. You say so, yourself. (139) I don't want you to try to mislead this Court.

Mr. Krieger: I'm not. I will never mislead this Court.

The Court: You were trying to tell us before he read it that it was not an affidavit, it was an affirmation.

Mr. Krieger: There is a distinction. This is not this man's affidavit.

The Court: I don't want to hear anything more on it. It is not his affidavit?

Mr. Krieger: No. I don't think it is an affidavit as such.

The Court: Why not?

Mr. Krieger: It is a statement by Mr. Wall. So you will see it for yourself and you know what we are talking about, it is a statement by Mr. Wall, signed by an attorney, his answer, and annexed thereto is an affirmation of the answer, as required by the Rules.

The Court: In the form of an affidavit.

Mr. Krieger: In the form of an affidavit, but an affirmation.

The Court: All right. Proceed.

Mr. Malchman: May I have the last question read back, please?

(140) (The reporter read the last question.)

A. I answered this. It's my signature.

[fol. 198] By the Court:

Q. Will you please answer the question?

A. It's true.

By Mr. Malchman:

Q. Now, was that statement to which you swore, Mr. Murphy, namely, that it is apparent that a labor dispute exists under the full control of the United States National Labor Relations Board—was that statement true at the time you swore to its truth?

Mr. Krieger: If the Court please, I object to that.

The Court: I will sustain the objection. It speaks for itself.

Q. Now, Mr. Murphy, is it now your testimony today that you fear you may incriminate yourself under a Federal penal law if you answer questions put to you by the Commission in this investigation?

A. It is.

Q. And is it your testimony, Mr. Murphy, that you fear that you may incriminate yourself under a Federal penal law that forbids theft from interstate commerce?

A. Accusations that were said, it does.

Q. Which accusations are you referring to?

A. Articles that were published in the newspaper.

(141) Mr. Krieger: I object. We are doing exactly what the Supreme Court said can't be done.

The Court: I'll allow it. It is proper cross-examination.

Mr. Krieger: May I at this time point out the law, for the record?

The Court: You have already read it. You are referring and relying upon the Boiardo case?

Mr. Krieger: Yes, but this particular portion thereof is so important.

[fol. 199] The Court: You may read it.

Mr. Krieger: If I may, with your Honor's permission:

"The area must be pinpointed to the extent to which it is possible to do so—" possible to do so, meaning the involvement—"without eliciting a hurtful answer. Here, if the witness truly feared involvement in the shooting, he could have so stated without implicating himself in the least."

In other words, the point I bring out, the limitation of the questioning must be such and limited to the point where he cannot be (142) placed in a position where a hurtful answer could be required from him.

The Court: I've allowed the question. I've already ruled I will allow the question. It is proper cross-examination.

Mr. Malchman: May I have the last question read?

(The reporter read the last question and answer.)

Q. What articles in the newspaper?

A. Well, to point them out,—it's been in the newspapers ever since that strike started—released by the Waterfront Commission.

Q. There have been articles in the newspaper respecting theft from interstate commerce?

A. Ridiculing me as a union official of pilferage, gangsterism, all released by the Waterfront Commission.

Q. Are you saying, Mr. Murphy, that there was a press release by the Waterfront Commission accusing you in connection with the work stoppage in May, 1960, of theft from interstate commerce?

A. I say there was a press release accusing me of having a part with others in this work stoppage.

[fol. 200] Q. And that was a press release; right?

A. It was in the paper.

(143) Q. And that is your basis for your fear that you may incriminate yourself?

A. That, and the release that was in the paper from people of the American Export Line that they were going to sue.

Q. Going to sue you for what? Breach of contract?
A. That's right.
Q. And that is your basis today for fear you may incriminate yourself?

Mr. Krieger: I object to that because the witness gave several reasons and counsel tries to limit it to a reason.
The Court: It is proper cross-examination. I'll allow it.

A. Would you mind repeating the question?

(The reporter read the last question.)

A. As knowing the Waterfront Commission, that's my basis.

The Court: Would you read that answer?

(The reporter read the last answer.)

Q. Mr. Murphy, is there any other Federal penal law as to which you may fear you may incriminate yourself if you are required to testify before the Commission, other than theft from interstate commerce?
A. Well, the Export being subsidized. The strike. Being subsidized by the United States Government, where I can be sued and the union can be sued.
(144) Q. Is there any other basis?
A. Offhand, right now, that's all.

Mr. Malchman: No further questions.

[fol. 201] Redirect examination.

By Mr. Krieger:

Q. You did testify keeping this man Markley—

Mr. Malchman: I object to leading questions at this time.
Mr. Krieger: I have a right to—
Mr. Malchman: I didn't object the first time.
The Court: I have no question.

Q. Mr. Murphy, you did testify keeping Markley off the waterfront, as contended in this investigation, was one of

your reasons, too, in depriving him of his job? Is that still your answer?

A. That's right.

Mr. Krieger: Thank you.

Mr. Malchman: No further questions.

(Witness excused.)

Mr. Malchman: Is Mr. Moody going to take the stand?

Mr. Krieger: Your Honor, to save time, we can have a stipulation that Moody's testimony will be in accordance with Murphy's (145) testimony, if your Honor please. We can save time in calling him.

The Court: I have nothing to do with that.

Mr. Malchman: There will be no such stipulation, your Honor.

Mr. Krieger: Allow me one moment, then.

JOHN MOODY, sworn.

Direct examination.

By Mr. Krieger:

Q. Mr. Moody, you were called in response to a subpoena that was issued to you to appear before the Waterfront Commission and did so appear; is that correct?

A. Yes.

[fol. 202] Q. As a result of which we presently have these contempt proceedings; is that correct?

A. That's right.

Q. You are connected as an officer with the International Union, is that correct, or an organizer?

A. That's right.

Q. And you are stationed in the city of Hoboken, State of New Jersey?

A. That's right.

Q. In your capacity, Mr. Moody, the pier of the American Export Lines is under your jurisdiction; is (146) that correct?

A. That's right.

Q. You did exercise a privilege under the Statute of the State of New Jersey and also the Constitution of the United States that you could possibly incriminate yourself if you were compelled to answer these questions relative to the strike, to dispose of one Markley or prevent one Markley from working on the piers? Do you recall that?

A. That's right.

Q. And, Mr. Moody, you were served with various papers in these proceedings and did attend the hearing in which the examination took place and in which the Waterfront Commission stated they were investigating this illegal action; is that correct?

A. That's right.

Q. Your reasons for exercising—the American Export Line is engaged in interstate commerce, are they, Mr. Moody?

A. That's right.

Q. You have been employed around this waterfront for how many years?

A. Around forty years.

Q. You know of your own knowledge that ships come in from all parts of the world there?

A. That's right.

Q. You were aware of the fact that the Waterfront Commission was investigating a stoppage that took place on May 16, 1960, or around that time?

A. That's right.

Q. You are aware of the fact that the Waterfront Commission contended that this was an illegal stoppage?

A. That's right.

Q. Mr. Moody, you were subpoenaed to answer several questions or a number of questions relative to that illegal [fol. 203] action that they contended that they had; is that correct?

A. That's right.

Q. And you exercised your privilege as you have just testified out of fear of incrimination of any Federal laws?

A. That's right.

Q. Will you tell the Court what you feared and pinpoint them and the respect?

A. First, from the Waterfront Commission, they have, what they say, the right and authority to question. Now, there's, we say, pilferage, that they say, work stoppage, we had to do with the pilferage and we had to do with the work stoppage; and the watchmen being not in the ILA, outside the ILA, that we tried to tell the watchmen what to do and what not to do, and to stop this one gentleman from getting hired on the pier. We don't do that, your Honor.

Q. You're not being asked that. You're being asked the reason for your exercise of the privilege, not what you do and what you don't do.

Mr. Krieger: I ask that portion of the (148) answer, "We don't do that," be stricken from the record.

The Court: No. I'll let it stand.

Q. You have just testified that the American Export Lines are engaged in interstate commerce; is that correct?

A. That's right.

Q. And that this stoppage, as contended by the Waterfront Commission was an illegal stoppage, was an interference with interstate commerce?

A. That's right.

Q. And is that why you fear incrimination?

A. That's right.

Q. And that it could lead to other evidence and tend to lead to other evidence that could possibly incriminate you?

A. That's right.

Q. You are not a lawyer, Mr. Moody, are you?

A. No, sir.

Mr. Krieger: That's all.

[fol. 204]. Cross examination.

By Mr. Malchman:

Q. Mr. Moody, were you a respondent or a defendant in a contempt proceeding instituted against you by the Waterfront Commission in this court in or about May of 1960?

(149) Mr. Krieger: I object to the question, your Honor, as to its relevancy in this subject matter.

The Court: I'll allow it.

Mr. Malchman: May I have the question read?

(The reporter read the last question.)

A. I don't follow you, actually. What proceeding? What are you talking about there? Are you talking about I was brought into this court? I was brought into this court, yes, sir.

Mr. Krieger: You will have to speak louder so the learned judge can hear you.

The Witness: I will.

Q. Did you execute an affidavit in that first proceeding?

A. An affidavit?

Q. Yes.

A. What do you mean, an affidavit?

Q. Did you sign your name before a Notary Public?

A. No, sir.

Q. On a paper?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. You are pretty sure about that?

A. I'm darn positive.

Mr. Malchman: Incidentally, your Honor, may I have Commission's Exhibit for identification (150) C-1 received in evidence?

Mr. Krieger: I object to it.

The Court: Wait until you are through with the witness.

Mr. Krieger: This was in connection with the prior witness. I didn't offer it.

[fol. 205] The Court: You mean the other witness?

Mr. Malchman: Yes.

The Court: Offer it in evidence.

Mr. Malchman: I would like to offer it in evidence.

Mr. Krieger: I object to it on the ground it is part of the record of a prior proceeding and is not proper evidence in this proceeding.

The Court: I'll allow it.

Mr. Krieger: It can only be prejudicial in this case.

The Court: Let it be marked in evidence.

(Exhibit C-1 for identification received in evidence as Exhibit C-1.)

Mr. Malchman: May I have this marked for identification, please?

(Document referred to marked Exhibit C-2 for identification.)

(151) Mr. Krieger: I would like to show this to the Court.

The Court: I don't care to look at it. I have nothing before me.

Mr. Krieger: O. K.; all right.

Q. I show you, sir, Commission's Exhibit Number 2 for identification and ask you whether that is your signature. Take it, please.

A. Yes, that's my signature. That's it.

Q. Now, sir, I ask you whether in this affidavit you did or did not deny the allegation of paragraph 9 of the motion papers filed herein.

Mr. Krieger: It speaks for itself, your Honor. He's admitted he signed it. It's his affidavit in that respect.

[fol. 206] The Court: I'll allow it. He may answer.

A. Yes, sir.

The Court: You may read it, please.

Mr. Malchman: I ask that this be marked for identification.

The Court: First, let's get an answer to that question.

A. Yes.

The Court: What is the answer?

Mr. Malchman: Yes.

(152) The Witness: That's my signature.

Mr. Malchman: I offer this in evidence, your Honor, as Commission's Exhibit Number 2.

Mr. Krieger: I object to it on the ground it has no relevancy. It is not in any way related to the subject matter before the Court. It is simply an answer in denial of the

allegations of the motion papers. That is why I asked your Honor to see it before. Now that it is being offered, I respectfully request your Honor to examine it.

The Court: What is paragraph 9?

Mr. Malchman: Paragraph 9 of the Commission's motion papers, and I am going to ask that the Commission's motion papers be marked for identification.

Mr. Krieger: The Judge asked a question.

The Court: I'll reserve my ruling on that offer. Please proceed.

Mr. Malchman: Paragraph 9 reads as follows:

The Court: No, no. What is it you are now marking for identification?

Mr. Malchman: This is Commission's Exhibit Number 3, which is the Commission's (153) original motion paper herein to punish this witness for contempt.

[fol. 207] The Court: In the present action?

Mr. Malchman: No, in the first proceeding in May of 1960.

(Document referred to marked Commission's Exhibit Number 3 for identification.)

Mr. Krieger: I object to it for this reason, because that proceeding is terminated now.

Mr. Malchman: Paragraph 9 of Commission's Exhibit Number 3 reads as follows, your Honor, and this is the paragraph which was denied by the witness in that first proceeding:

"The Waterfront Commission has information that this work stoppage is a concerted effort to keep James H. Markley off the piers of the American Export Lines in Hoboken, New Jersey. Accordingly, in order to determine whether this work stoppage constituted an illegal coercion of an employer (The American Export Lines) to compel such employer to limit the functions of, or to discharge, a licensed port watchman (James H. Markley) and to further determine whether any persons registered or (154) licensed by the Waterfront Commission are participating in such illegal coercion, the Commission instituted the instant investigation."

The Court: What does the affidavit say?

Mr. Malchman: It denies the truth—

The Court: Read it.

Mr. Malchman: "I deny the allegations of paragraphs 5 and 9 of the motion papers filed herein," and I just got through reading to your Honor paragraph 9.

Mr. Krieger: These proceedings were instituted in 1960. We're not talking about the proceedings today. We're talking about the 1960 proceedings. There were allegations made, and the fact is, if anything, these allegations now [fol. 208] prove my point that I make in this case today, because in this allegation of paragraph 9 the Waterfront Commission has information that this work stoppage—in other words, they admit they have such information—was an illegal act, an illegal coercion, and this is their allegation. All this man did, in an answer filed, he denies that they have such information as far as he is concerned.

The Court: What is the purpose of this (155) offer?

Mr. Malchman: Because this witness in the original contempt proceeding denied under oath that there was even a work stoppage to keep Mr. Markley off the pier.

Mr. Krieger: He could deny there was an illegal work stoppage. The Waterfront Commission said it was an illegal work stoppage.

The Court: I'll sustain the objection.

Q. Now, Mr. Moody, I would like you to tell me whether there is any Federal penal law as to which you may fear you will incriminate yourself if your answer questions in this investigation before the Waterfront Commission.

Mr. Krieger: Your Honor, the witness is not a lawyer. He cannot tell what the Federal penal law might be. He can only tell them what areas and pinpoint what areas he can possibly be implicated.

The Court: I'll allow the question.

Read the question.

(The reporter read the last question.)

A. First, the one work stoppage, or any cargo that comes into the United States on a ship is ICC. That's Federal Government. Second, to have anything to do with (156)

trying to tell who to put in as watchman from stopping thievery on the pier, or to compel the company or anybody [fol. 209] else that there's got to be certain people to go on there, and thievery on the pier. That's the three. Outside of that, right now, at this special time, I wouldn't know no more, but maybe there are more.

Q. Then, is it your testimony, Mr. Moody, that if you are compelled to answer questions before the Commission in this investigation you fear you may incriminate yourself under the Statute prohibiting theft from interstate commerce?

A. That's right.

Mr. Malchman: I have no further questions.

Mr. Krieger: I have nothing further.

(Witness excused.)

COLLOQUY

The Court: Does that complete the evidence?

Mr. Krieger: That completes it insofar as that portion thereof, as far as pinpointing. As far as the trial of the cause, that's another story in that respect. They haven't offered any proof in that respect.

The Court: I don't follow you.

Mr. Krieger: We have offered proof on the motion, your Honor, of pinpointing the areas in which there could possibly be incrimination. (157) Insofar as a trial is concerned, your Honor must determine whether or not there will be a trial. We have other motions. Your Honor knows about the other motions as far as a jury trial.

The Court: Do you care to be heard any further on the matter that was presented this morning?

Mr. Krieger: No, your Honor, excepting if I may just take one moment. I think it is now more than clear and more than obvious that the witnesses themselves have both pinpointed. If there was any thought that the record was not sufficient, if there possibly could have been that argument that the record did not pinpoint or the record did [fol. 210] not show an area or areas of possible incrimination, now with the additional testimony by the witnesses

themselves pinpointing the areas of possible incrimination, I think it is quite clear that it appears that the witnesses had a right to exercise the privilege as guaranteed to them by the laws of this State of exercising privilege in the event that there can possibly be any incrimination or tend to lead to any (158) evidence that could possibly incriminate them as far as these Federal offenses or several offenses enumerated therein.

Mr. Malchman: May I be heard very briefly on the questions that were presented this morning?

The Court: Yes.

Mr. Malchman: I think it is apparent from what has transpired this morning that these witnesses are not claiming that they fear Federal prosecution because they truly and sincerely fear such incrimination but for no other reason than they don't want to testify, and I think it is perfectly within your Honor's province to make that finding.

With respect to Mr. Murphy, he has already gone on record in this court in the first contempt proceeding instituted by the Commission that this was a labor dispute within the cognizance of the National Labor Relations Board, period. Now he comes on the stand and tells a completely different story, that he is afraid he may incriminate himself as to thefts from interstate commerce.

Apart from this blatant contradiction (159) in his sworn papers and his sworn testimony in this court, he testified just now under oath that the only basis for his incrimination were press releases by the Commission and nothing else; and not what he did or not what actually happened, [fol. 211] but because there were press releases by the Commission and, as he says, "knowing the Commission as I do."

I say to your Honor that is an insufficient basis for invoking the privilege, and the same is true of Mr. Moody.

Mr. Krieger: I am sorry that counsel missed the point completely. Evidently, he has. Your Honor, there is no testimony offered by the Waterfront Commission at all in this entire matter. The burden is upon them—

The Court: Counsel, I'm awfully sorry. I'm not going to have argument. You had all day yesterday to argue this matter.

Mr. Krieger: I'm just saying this in answer to his argument.

The Court: You may answer that and nothing else.

Mr. Krieger: I'm not going to devote (160) time to further argument. I said the burden of proof is upon them, not upon the defendants to show—all the defendants must show in the situation is that there is a possibility—

The Court: Well, counsel, you told me that about eight times during the course of this hearing.

Mr. Krieger: As far as the newspaper article he speaks of, an individual has a right to show—he went further than necessary to do so. He said at the time they had newspaper releases. They didn't deny this.

The Court: Where are the exhibits?

Mr. Malchman: The exhibits are here, your Honor.

The Court: May I have them?

Mr. Malchman: I didn't have one exhibit introduced into evidence, Exhibit 3. May I have that introduced into evidence?

The Court: What is it? Show it to your adversary.

[fol. 212] Mr. Krieger: I object to it, your Honor, because it relates to entirely other subject matter. It is a complaint that was issued at that time, part of the record of another case. (161) Insofar as the answers, they are merely answers thereto. They serve no purpose of anything, excepting an indication that the issue before the Court in 1960 was a question for the Court to determine whether or not the Waterfront Commission had jurisdiction to investigate this type of a matter, and that was the only issue for determination, and these papers show such issue, and not on this question at all, and they have no relevancy in any way.

The Court: What is this exhibit?

Mr. Malchman: This is the Commission's original motion in the original contempt proceeding to punish Moody for contempt, and this is the motion as to which Mr. Moody filed an affidavit in the first contempt proceeding denying certain paragraphs in this motion, and that affidavit is Exhibit Number 2 in evidence, and since that affidavit is in evidence, I think it would clarify Exhibit Number 2 if Ex-

hibit Number 3 were in evidence, so it will appear what he was denying.

The Court: I'll accept it. Let it be marked.

Mr. Krieger: I object, of course.

(Commission's Exhibit Number 3 for identification received in evidence as Commission's Exhibit Number 3.)

(We will recess, gentlemen, until half-past two.)

(A recess was taken until 2:30 P. M.)

* * * * * * *

[fol. 213]

ORAL DECISION—November 22, 1961

(2) The Court: I will first consider the motion presented under the Order to Show Cause pursuant to R. R. 4:46-5(c), requiring the respondents, William Murphy and John Moody, Sr., to show cause before this Court why they should not be punished for a contempt of Court.

These respondents also move for an order quashing the subpoenas which have been issued heretofore requiring their attendance before the Waterfront Commission of New York Harbor at its offices, 15 Park Row, New York City, New York.

These two motions, by consent of counsel, were consolidated.

The defendants further move for a bill of particulars and seek, under adverse conditions, a jury trial in these proceedings for civil and criminal contempt.

The witnesses, or the respondents, also move for answers to certain interrogatories which they demand of the Commission.

The events leading up to this Order to Show Cause and the various motions are as follows:

One James H. Markley was an investigator for the Commission, assigned principally to cover (3) the piers and terminals of the American Export Lines in Hoboken. On or about May 16, 1960, Markley left the employ of the Waterfront Commission in order to work for American Export as a security officer. To fulfill his security functions, Mark-

ley obtained a license from the Commission permitting him to operate as a port watchman.

On May 16, 1960, the day Markley was to commence work for American Export, the longshoremen and checkers employed by American Export in Hoboken did not report for work. With the exception of the morning of May 17th, the work stoppage continued until May 25th. The striking employees were members of Hoboken Local number 2 of the [fol. 214] Independent Longshoremen's Association (ILA). Respondent Moody is an organizer for the ILA in New Jersey, and respondent Murphy is business agent for Local number 2.

The Waterfront Commission had information that the work stoppage was "a concerted effort to keep James H. Markley off the piers of the American Export Lines." Accordingly, it instituted an investigation to determine whether any persons registered or licensed by the Commission were (4) violating the Waterfront Commission Act (N. J. S. A. 32:23-1, etc.) by coercing an employer (American Export) to limit the functions of or discharge a licensed port watchman (Markley).

In connection with the investigation the Commission served subpoenas ordering the respondents to appear and testify. When these gentlemen appeared on May 19, 1960, at the Waterfront Commission offices at 15 Park Row, New York City, New York, they were told that they were subpoenaed for the purposes of making an investigation under Article IV of the Waterfront Commission Compact and to ascertain facts surrounding a work stoppage at Piers A, B, and C, Hoboken, New Jersey.

Respondent John Moody, Sr., gave his name and address, testified he was a union official, and refused to answer the following questions:

"Question: Are you an official of any ILA Local?"

"Question: Mr. Moody, will you tell us what local you are an official of?"

"Question: Mr. Moody, what position do you hold with the local ILA that you are affiliated with?"

"Question: All right, Mr. Moody, would you (5) tell us when you first received news of any labor trouble on Piers A, B, and C in Hoboken?"

"Question: Mr. Moody, within the last weeks have you attended any conferences with the officials of the American Export Line with respect to the work stoppage at Piers A, B, and C in Hoboken?"

[fol. 215] "Question: Have you had any conversation with Captain Andrews, Leland Andrews, of American Export Line with reference to the stoppage this week at Piers A, B, and C in Hoboken, New Jersey? When I say this week, I mean from May 16th to the present."

"Question: Mr. Moody, have you had any discussions or conversations with Captain Blackledge of American Export Lines concerning the refusal to work at Piers A, B, and C of longshoremen in that particular—on those particular piers this week?"

"Question: Have you had any conversations with Michael McNamara, Senior, Hiring Agent of the American Export Lines, concerning the work stoppages at Piers A, B, and C that have occurred since May 1, 1960, to the present?"

"Question: Mr. Moody, have you at any time (6) either prior to the work stoppage which commenced on May 16, 1960, or before that time or after that time, did you at any time issue orders for a work stoppage at Piers A, B, and C?"

"Question: Did you, before May 16th, ever give any orders for the commencement of a work stoppage at Piers A, B, and C?"

"Question: Have you since May 16th, in other words, May 16th, 17th, 18th, and 19th, have you on these particular days issued any instructions concerning work stoppages and instructions, now both either commencing or ceasing the stoppages at Pier A, B, and C in Hoboken?"

"Question: Have you had any conversations with anyone since May 16, 1960, to the present concerning the work stoppages at Piers A, B, and C?"

"Question: What is your function with the local in Hoboken?"

"Question: What is your position with the union?"

"Question: Mr. Moody, were you present on Piers A, B, and C, Hoboken, on Monday, this week?"

"Question: Were you at the piers on Tuesday?"

[fol. 216] Respondent Murphy testified that he was a (7) business agent of Local number 2 and represented members of the local working at the American Export facilities in Hoboken. He stated that he knew the longshoremen did not work on May 16, 1960, and that it was common knowledge for the ten days preceding May 16th that things were not normal at the American Export piers.

Respondent Murphy refused to answer the following questions:

"Question: Now, for the record, Mr. Murphy, did you have anything to do with causing the strike that is presently pending at the American Export Line?"

"Question: Did you in any way participate in the work stoppage to compel the American Export Line to discharge or to limit the duties of their employee James Markley?"

Mr. Murphy refused to give any further testimony to answer the foregoing questions.

Mr. Murphy and Mr. Moody based their refusals to testify on the following grounds:

1. The work stoppage is a matter which the Commission has no statutory authority to investigate.

2. The work stoppage is a matter over (8) which the National Labor Relations Board has exclusive jurisdiction.

3. The Commission has no right to investigate the work stoppage since civil litigation may ensue as a result thereof. (The American Export Lines had threatened to sue the ILA.)

4. The Commission's investigation seeks to inquire into a privileged communication between union and management and/or between union representatives.

Neither defendant asserted his privilege against self-incrimination.

The Commission's interrogator overruled the defendants' objections to the question, directed them to answer, and informed them that continued recalcitrance would subject [fol. 217] them to contempt proceedings. Defendants persisted in their refusal.

Thereupon the Commission instituted contempt proceedings against the defendants, Murphy and Moody, in the Superior Court of New Jersey, Hudson County, which by judgment dated June 20, 1960, adjudged Murphy and Moody guilty of civil contempt and ordered that they be fined $50.00 each and that they be incarcerated until they (9) obeyed the Commission's subpoenas. The judgment of contempt against Murphy and Moody was affirmed by the Supreme Court of New Jersey by mandate dated May 22, 1961. A copy of the printed record upon the appeal is annexed as Exhibit C to plaintiff's moving papers herein, and a copy of the mandate of the Supreme Court as Exhibit D.

Thereafter Murphy and Moody appealed to the Supreme Court of the United States and applied to the Supreme Court of New Jersey for a stay pending such appeal, which application was denied by the Supreme Court of New Jersey on August 14, 1961. Appellants then applied to Mr. Justice Brennan of the United States Supreme Court for a stay pending appeal, which application was denied by Mr. Justice Brennan. Application was then made to Mr. Justice Brennan for reconsideration of his denial of a stay and for oral argument in connection therewith. This second application was also denied by Mr. Justice Brennan on September 29, 1961.

The defendants, Moody and Murphy, appeared before this Court on October 3, 1961, pursuant to the mandate of the Supreme Court of New Jersey. At that time they were directed to appear at the (10) offices of the Commission pursuant to the Commission's subpoenas. They did so appear as directed on October 3, 1961.

Again the defendants were advised that the purpose of the investigation was to inquire into the factual background of the work stoppage that took place on May 16, 1960, and through May 20th at Piers A, B, and C in Hoboken, to [fol. 218] inquire whether or not a violation of the Compact took place.

Mr. Murphy testified that he was business agent for Local 2 of the International Longshoremen's Association. Mr. Murphy refused to answer the following questions:

"Question: And as such business agent, what are your duties, Mr. Murphy?"

"Question: Mr. Murphy, when did you first become aware that on May 16, 1960, a work stoppage had taken place at Piers A, B, and C, Hoboken, the American Export Line Terminal?"

"Question: Did you have any conversations, Mr. Murphy, with union officials of the ILA prior to May 16, 1960, concerning the presence of one James Markley on Piers A, B, and C as a security officer for the American Export Lines?"

(11) "Question: Did you have any conversations with the officials of American Export Line on May 16, 1960, May 17, 1960, May 18, 1960, May 19, 1960, and May 20, 1960, concerning the presence of James Markley as a security officer on Piers A, B, and C, Hoboken?"

"Question: Mr. Murphy, did you at any time during the period covered by the dates May 16th to May 20, 1960, appear on the terminal or in the offices of the terminal at Piers A, B, and C, Hoboken, in connection with the work stoppage that resulted on the days May 16th to May 20th?"

"Question: Mr. Murphy, did you at any time prior to May 16, 1960, speak with one Michael McNamara, Hiring Agent at the American Export Lines Piers, concerning the presence of James Markley as a security officer on those particular piers?"

John Moody, Sr., gave his address and testified that he was an organizer of the ILA in the State of New Jersey. Mr. Moody, Sr., refused to answer the following questions:

"Question: In that position and in respect to that position, what are your duties, Mr. Moody?"

"Question: Mr. Moody, would you tell us when (12) you first became aware of labor trouble at Piers A, B, and C in [fol. 219] Hoboken on or about May 16th, during the period covered from May 16, 1960, through May 20, 1960?"

"Question: Mr. Moody, with respect to the work stoppage that occurred on May 16, 1960, at Piers A, B, and C in Hoboken, did you have any conversations with any of the union officials about the presence of one James Markley as a security officer on the said terminal?"

"Question: Mr. Moody, did you have any conversations covering the work stoppage that occurred on May 16, 1960, with officials of American Export Line, specifically Leland Andrews or others, such as Captain Blackledge, concerning the presence of James Markley on the terminal as a security officer?"

"Mr. Moody, were you physically present at Piers A, B, and C in Hoboken on May 16, 17, 18, 19 and 20, 1960?"

"Question: Mr. Moody, did you have any conversations with Michael McNamara on May 16, 17, 18, 19, or 20, 1960, concerning the presence of Markley, James Markley, a security officer on the Hoboken Terminal?"

(13) "Question: Mr. Moody, did you ever meet with any of the executives of American Export Lines with respect to settlement of the dispute concerning Markley's presence as a security officer on Piers A, B, and C in Hoboken?"

"Question: Did you ever speak to Michael McNamara prior to May 16, 1960, concerning the presence of James Markley as a security officer on Piers A, B, and C, Hoboken?

"Question: Now, Mr. Moody, did you at any time issue orders for a work stoppage on Piers A, B, and C, Hoboken, because of the presence of James Markley on Piers A, B, and C?"

"Question: Mr. Moody, have you since May 16, 1960, issued any instructions concerning work stoppages either commencing or stopping the stoppage at Piers A, B, and C, Hoboken?"

The respondents in this case, Murphy and Moody, based their refusal to answer the set out questions on the grounds [fol. 220] that they had not been properly and adequately apprised of the purpose of the investigation and on their privilege of self incrimination.

The subpoena was adjourned to October 10, 1961. The Commission was going to determine (14) whether it wished to confer immunity upon the witnesses and to provide for appropriate notice to the district attorneys involved.

On October 4, 1961, the respondents, William Murphy and John Moody, Sr., appeared again before this Court at which time this Court decided that they had purged them-

selves of their contempt, as the Commission had recognized as a proper ground and legal basis for their refusing to answer those particular questions, as the records shows, the basis of their constitutional right that their answers might tend to incriminate them. This Court further found the subpoenas still to be effective and returnable on October 10, 1961.

On October 27, 1961, the duly adjourned return date of the Commission's subpoenas, the defendants, Murphy and Moody, appeared at the offices of the Commission. The Commission introduced into evidence the following:

Designations authorizing Myles J. Ambrose to act in the place of Commissioner Harold R. Tyler, Jr., to confer immunity upon William Murphy and John Moody, Sr., marked Commission's Exhibits 1 and 2.

Designations authorizing William P. Sirignano (15) to act in the place of Commissioner David C. Thompson to confer immunity upon William Murphy and John Moody, Sr., marked Commission's Exhibits 3 and 4.

Letters of notice of granting immunity to William Murphy and John Moody, Sr., which were mailed to the following:

Honorable Lawrence Whipple, Prosecutor of Hudson County.

Honorable David Furman, Attorney General of New Jersey.

[fol. 221] Honorable Frank Hogan, District Attorney of New York County.

Honorable Louis Lefkowitz, Attorney General of New York.

Also offered into evidence by the Commission were the following:

Letter from David D. Furman acknowledging receipt of the previously offered letter.

Letter from Frank Hogan acknowledging receipt of the same letter.

Letter from office of Louis Lefkowitz regarding the same letter.

However, no acknowledgment was received from Lawrence Whipple, Prosecutor of Hudson County.

(16) The respondents, or the defendants, William Murphy and John Moody, Sr., were apprised that the investigation concerned a stoppage of work that occurred on the morning of May 16, 1960, at the Hoboken Terminal of the American Export Lines, Piers A, B and C in Hoboken and, further, that the parties were there to discover whether there were any violations of the Compact.

The defendants were then informed of section 5-b(5) of the Waterfront Commission Act and its passages wherein the power to grant immunity from prosecution is set forth were read to them. They were then instructed as follows:

"If a question is asked of you and you honestly believe the answer may incriminate you, you may plead that privilege and you do not have to answer the question, except that where the Commission orders you and directs you to answer that question, you must answer it. Only you get this benefit from that direction: that any transaction concerning which you testify, you will be held immune from that and any answer you may give or evidence that you produce cannot be used against you."

[fol. 222] (17) No grant of immunity from federal prosecution was expressed.

Mr. William Murphy refused to answer the following questions:

"Question: Are you an official of the ILA, Independent?"

"Question: I direct your attention to a work stoppage that occurred on Monday, May 16, 1960, at Piers A, B, and C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that a work stoppage would occur Monday, May 16, 1960, at the said terminal?"

"Question: Mr. Murphy, who were the persons that gave you the information about the work stoppage on May 16, 1960, at the Hoboken Terminal of the American Export Line?"

"Question: Mr. Murphy, did you at any time give orders to longshoremen or others such as shop stewards that a work stoppage was to take place on May 16, 1960, at the American Export Line Terminal in Hoboken?"

"Question: Mr. Murphy, was the work stoppage that took place on the American Export Line Pier on May 16,

1960, related to the presence of one James Markley on the piers as a (18) security officer?"

"Question: Mr. Murphy, do you know whether the work stoppage that took place on May 16, 1960, at the American Export Line Terminal was related to the presence of one James Markley on the piers as a security officer?"

"Question: Mr. Murphy, did you have any conversations with any union officials of the ILA prior to May 16, 1960, about the presence of James Markley on the Hoboken Terminal as security officer?"

"Question: On May 16, 1960, did you, Mr. Murphy, have a conversation with one Leland Andrews concerning this work stoppage that took place on May 16, 1960, at the American Export Line Pier?"

[fol. 223] "Question: Did you in the conversation with Mr. Andrews on the 16th of May, 1960, reach any agreement over the presence of Mr. Markley on the Hoboken Terminal of the American Export Lines in Hoboken?"

"Question: Mr. Murphy, on the morning of May 17, 1960, were you on the American Export Line Hoboken Terminal?"

"Question: Mr. Murphy, on May 17, 1960, at (19) the Hoboken Terminal of the American Export Line did you have a conversation with one Michael McNamara?"

"Question: Mr. Murphy, on the morning of May 17, 1960, at the American Export Line Terminal in Hoboken did you have a conversation with one Frank Rump?"

"Question: Mr. Murphy, on the morning of May 17, 1960, did you have a conversation with one Carmen Bruno?"

"Question: Mr. Murphy, on the morning of May 17, 1960, at the Hoboken Terminal did you have a conversation with one Eric Lumpke?"

"Question: Mr. Murphy, on the morning of May 17, 1960, did you have a meeting with officials of the American Export Line?"

"Question: Did you at that time reach any agreement concerning the presence of Mr. Markley on the Hoboken Terminal as a security officer?"

"Question: Mr. Murphy, did you have a meeting with the Executive Vice President of American Export Line at

the offices of the American Export Line at 39 Broadway in New York City in August, 1960?"

(20) "Question: Mr. Murphy, did you at that meeting with the Executive Vice President of the American Export Line state that if Mr. James Markley walked on the Piers A, B, and C in Hoboken there would be a strike?"

"Question: Did you, Mr. Murphy, ever discuss or give any orders to any shop stewards or officials of your local to pull the men out on Piers A, B, and C in the event Mr. Markley walked onto the piers in May of 1960 in the per- [fol. 224] formance of his duty as a security officer for the American Export Lines?"

"Question: Mr. Murphy, do you know now whether Mr. Markley has ever, since May, 1960, walked on the piers in Hoboken, New Jersey, of the American Export Lines in connection with his duties as a security officer for that company?"

"Question: Mr. Murphy, do you know if Mr. Markley was at any time employed by this commission in any capacity whatsoever?"

"Question: Mr. Murphy, is it not true that the statement you made to the Vice President of the American Export Line in August, 1960, that if Mr. Markley steps on the Hoboken Terminal there would be a strike, is still in force today and (21) that Mr. Markley cannot step on the pier today in pursuance of his duties as a security officer?"

"Question: Mr. Murphy, did you in August, 1960, tell the Executive Vice President of the American Export Line that if Mr. Markley stepped on the piers there would be a walkout?"

"Question: In the event that Mr. Markley walked on the piers of Hoboken, New Jersey, today on the American Export Lines would you order the membership of the ILA present there off the piers?"

John Moody, Sr., gave his name and address. Mr. Moody, Sr., however, refused to answer the following questions:

"Question: Are you an official of the International Longshoremen's Association Independent or the International Longshoremen's Association which is affiliated with the AFL-CIO?"

"Question: Mr. Moody, I direct your attenttion to a

work stoppage that occurred on Monday, May 16, 1960, at Piers A, B, and C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that that work stoppage was to take place on Monday, May 16, 1960, at (22) that terminal?"

[fol. 225] "Question: Mr. Moody, would you tell the Commission the source of the knowledge that you had concerning the work stoppage at Piers A, B, and C, Hoboken, in May, 1960?"

"Question: Mr. Moody, did you at any time prior to May 16, 1960, give orders to any longshoremen, shop stewards, or others to commence a work stoppage on Monday, May 16, 1960, because of the presence of one James Markley on the piers as security officer?"

"Question: Mr. Moody, did you have any conversations with any other union official of the International Longshoremen's Association prior to May 16, 1960, about calling a strike concerning James Markley's presence on the Hoboken Terminal as a security officer?"

"Question: Did you have a conversation about calling a strike during the week of May 16, 1960, with one Mr. Gleason of the ILA?"

"Question: On the 17th of May, 1960, were you present on the terminal in Hoboken, which is called the American Export Lines Terminal? Were you present?"

"Question: Did you on that date, May 17, (23) 1960, tell the shop stewards, Frank Rump, Carmine Bruno, Eric Lumpke, to call the longshoremen out on strike because of Mr. Markley on the piers as a security officer?"

"Question: Did you attend a meeting on May 17, 1960, at the offices of the American Export Lines at the Hoboken Terminal? Did you attend such a meeting?"

"Question: Did you at that meeting state to Leland Andrews, another official of the American Export Lines, who attended the meeting, if Markley walks on the piers there would be a work stoppage?"

"Question: Did you either before May 16, 1960, or during the week of May 16, 1960, speak to Michael McNamara concerning a work stoppage at the American Export Lines Terminal over the presence of Mr. Markley at the piers?"

"Question: Prior to May 16, 1960, or during the week of May 16, 1960, did you have a conversation with Michael

McNamara concerning a work stoppage to be called on May [fol. 226] 16, 1960, over the presence of James Markley on the Hoboken Terminal as a security officer?"

"Question: Do you know Mr. William Murphy?"

(24) "Question: Do you see Mr. Murphy sitting in this room?"

"Question: Do you know Leland Andrews, Mr. Moody?"

"Question: Do you know Mr. Lyle Bull, Executive Vice President of the American Export Lines?"

"Question: Did you at any time, either in Hudson County, in the State of New Jersey, or in the County of New York in the State of New York, have any discussion with any executives of the American Export Lines, concerning Mr. Markley's employment with that shipping company?"

"Question: Do you know whether Mr. Markley has ever been on the piers in the performance of his duties as security officer of the American Export Lines since his employment in May of 1960?"

The respondents were directed by the designees of the Waterfront Commissioners to answer these questions. The defendants, or respondents, were told they were granted immunity as to their testimony.

The defendants refused to answer any of the above questions in spite of the direction to (25) answer by the said designees and the promise of immunity, and based their refusal on the grounds that the Commission failed to set forth fully the purposes of the investigation, a failure of due process, and they further invoked the privilege of self incrimination.

The Waterfront Commission now seeks to have the defendants adjudged guilty of contempt of court, civil and criminal, for their failure to answer the questions set out after they had been granted immunity from prosecution by the Commission.

In opposition, the defendants claim the purported grant of immunity is invalid because the Commission failed to comply with the statute which grants immunity, N. J. S. A. [fol. 227] 32:23-86(5) in that proper notice was not sent to the various law officers of the two states, in that the grant

of immunity was not explicit as to each question and, further, in that it was improper for the designees of the Commissioners of the Waterfront Commission to grant this immunity. The defendants further maintain that they were denied due process in that the Commission failed to disclose any damaging information it had and (26) further failed to produce accusatory witnesses.

The defendants, or respondents, rely strongly on N. J. S. A. 84 A, Rules of Evidence, and contend that Rule 24 of that section, N. J. S. A. 2A:84 A-18, extends the definition of incrimination to crimes against the United States and other states and that Rule 25 of that section wherein is provided "Subject to Rule 37, every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate" thereby provides a privilege of self-incrimination which includes federal incrimination as well as state incrimination. This is one of the contentions of these witnesses, or defendants.

The defendants contend that since the purported immunity granted by the Commission does not apply to immunity from federal incrimination, it is not coextensive with the privilege against self-incrimination invoked and is, therefore, unconstitutional.

The defendants further maintain that they have reasonable cause to apprehend a criminal (27) prosecution and set out numerous federal statutes it may be claimed they violated.

The defendants claim a failure of due process of law in that they were not properly apprised of the subject matter of the investigation, as I have previously stated.

The Waterfront Commission Act was passed by the State of New Jersey in 1953 (R. S. 32:23-1 etc.).

Some of the general powers of the Commission are as follows:

[fol. 228] "Article IV.

"In addition to the powers and duties elsewhere prescribed in this compact, the Commission shall have the power

"8. By its members and its properly designated officers, agents and employees to administer oaths and issue subpoenas throughout both states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

"11. To make investigations, collect and compile information concerning waterfront practices generally within the Port of New York District and upon all matters relating to (28) the accomplishment of the objectives of this Compact.

"13. To make annual and other reports to the governors and legislatures of both states containing recommendations for the improvement of the conditions of waterfront labor within the Port of New York District, for the alleviation of the evils described in Article I and for the effectuation of the purposes of this Compact." (Waterfront Commission Act, Part 7, Article IV, Sections 8, 11, 13, N. J. R. S. 32:23-10.)

"Witness shall mean any person whose testimony is desired in any investigation, interview or other proceeding conducted by the Commission pursuant to the provisions of this Act." N. J. R. S. 32:23-85.

N. J. R. S. 32:23-86 provides:

"In addition to the powers and duties elsewhere prescribed in this Compact, the Commission shall have the power

"To confer immunity in the following manner: In any investigation, interview or other proceeding conducted under oath by the Commission or any duly authorized officer, (29) employee or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and notwithstanding such refusal, an order is made upon [fol. 229] twenty-four hours' prior written notice to the appropriate attorney general of the State of New York or the State of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the Commission

or their designees appointed pursuant to the provisions of section three of article III of this Act, that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order and if but for this subdivision he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him as provided for herein.

"Immunity as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or (30) thing concerning which, in accordance with the order of the unanimous vote of both members of the Commission or their designees appointed pursuant to the provisions of section three of Article III of this Act, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer or in producing or failing to produce evidence in accordance with the order, and any such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

"Immunity shall not be conferred upon any person except in accordance with the provisions of this subdivision. If after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate attorney general or district attorney or prosecutor having an official interest therein (31) was not notified, such failure or neglect shall not deprive such person of any immunity properly conferred upon him."

[fol. 230] N. J. R. S. 32:23-9 provides:

"The Commission shall act only by unanimous vote of both members thereof. Any member may, by written instrument filed in the office of the Commission, designate any officer or employee of the Commission to act in his place as a member whenever he shall be unable to attend a meeting

of the Commission. A vacancy in the office of a member shall not impair such designation until the vacancy shall have been filled."

Chief Justice Weintraub, in *Department of Health, State of New Jersey, versus Peter Roselle,* N. J. , a case decided on March 20, 1961, in the Supreme Court of New Jersey, sets forth the history of contempt actions and describes and defines both civil and criminal contempt. He said, among other things:

"If the order is mandatory and the violator has the ability to perform, the Court will ordinarily jail the offender until he complies. If the order is prohibitory, again the offender (32) may be incarcerated until he undoes the violation if he has the ability to undo it."

The present proceeding is both criminal and civil.

In the above cited case, Judge Weintraub said:

"Yet the object of the proceedings is of great moment for if it is criminal, he is entitled to the safeguards accorded one charged with crime, except the constitutional guarantee of the indictment and trial by jury, and even as to them, we note in passing that a vigorous dissent in *Green versus United States,* 356 U. S. 165, 2 L. Rev. 672, 1958, finds those rights are assured. See Comment, 57 Michigan Law Review, 258, 1958."

N. J. S. 2A:10-1 deals with the power of the courts "to punish for contempt."

The contempt process is severe because of its summary nature and the many different parts a court plays in the proceeding. Naturally, the power should be used cautiously and sparingly.

[fol. 231] I find that the designations authorizing Myles J. Ambrose to act in the place of Commissioner Harold Tyler, Jr., to confer immunity upon William Murphy and John Moody, Sr., which (33) designations were introduced into evidence by the Waterfront Commission at the investigation of October 27, 1961, before mentioned, and the designations authorizing William P. Sirignano to act in the place of Commissioner David C. Thompson to confer immunity

upon William Murphy and John Moody, Sr., at the same investigation are valid and comply with the requirements of N. J. R. S. 32:29-9 above.

I further find that the letter to Lawrence A. Whipple, Prosecutor of Hudson County, New Jersey, dated October 10, 1961, and the letter to David D. Furman, Attorney General of New Jersey, along with the letter dated October 23, 1961, to Frank Hogan, District Attorney for New York County, New York, and the letter dated October 24, 1961, to Louis Lefkowitz, Attorney General for New York, which letters were introduced into evidence at the said investigation of October 27, 1961, meet the requirements for notice set out in N. J. R. S. 32:23-86 and are sufficient for the purpose therein expressed.

I find that the explanation of the doctrine and statutory provision of immunity, as expressed by Mr. Piazzi and Mr. Sirignano of the Waterfront (34) Commission on pages 58, 59, 60, etc., of the transcript of the investigation relating to William Murphy on October 27, 1961, which is incorporated into the investigation of that date concerning John Moody, Sr., by the statements of parties expressed on page 1 of the transcript of that investigation, which is further explained on pages 8 and 9 of said transcript, adequately and properly apprised the defendants of the offered grant of immunity whenever the privilege of self incrimination is invoked and the defendants were directed by the designees of the Commissioners to answer the questions.

The transcripts of the investigations conducted May 19, 1960, October 3, 1961, and October 27, 1961, are replete with [fol. 232] explanations as to the subject matter of the investigation. The opinion of the Supreme Court of New Jersey confirming this Court's judgment of contempt against Murphy and Moody sets forth at length the subject matter of the Commission's investigation. The Jurisdictional Statement filed in the Supreme Court of the United States further shows the defendants' familiarity with the (35) subject matter of the Commission's investigation.

I now turn to a consideration of the defendants' contention as advanced in their supplemental and reply brief that the grant of immunity offered by the Waterfront Commission is unconstitutional in that it is not co-extensive with

the privilege against self-incrimination invoked. Defendants argue that N. J. R. S. 84 A-1, etc., does not extend the privilege against self-incrimination to a protection against federal incrimination.

It is acknowledged that the grant of immunity offered by the Waterfront Commission did not extend to protection against federal incrimination.

This Court, in a consideration of Chapter 84 A, Rules of Evidence, notes that Rule 2, N. J. R. S. 2A:84 A-16, Scope of Rules, provides in section 4 as follows:

"The enactment of the rules set forth in this act or the adoptions pursuant hereto *shall not operate to repeal any statute by implication.*" Italics by the Court.

Rule 25, N. J. R. S. 2A:84 A-19, Self Incrimination; Exceptions, provides as follows:

(36) "Subject to Rule 37, every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate, except that under this rule:

"(c) *No person has a privilege to refuse to disclose any matter which the statutes or regulations governing his office, activity, occupation, profession or calling,* or governing the corporation or association of which he is an officer, [fol. 233] agent or employee, *require him to record, or report or disclose,* except to the extent that such statute or regulations provide that the matter to be recorded, reported, or disclosed shall be privileged or confidential." Italics by the Court.

N. J. R. S. 2A:84 A-40, Effect of Rules on Conflicting Laws, provides:

"All previous laws or parts of laws dealing with the admission or rejection of evidence *which shall be expressly identified by footnotes to any rule so adopted* and which shall be in conflict or inconsistent with such rule or rules or included therein, revised or rendered obsolete (37) thereby shall be of no further force or effect after such rule or rules shall have taken effect." Italics by the Court.

The "Repeals" provision of the statute referred to provides:

"The following acts and parts of acts and all amendments and supplements thereto are hereby repealed: Sections 2A:81-3, 2A:81-5, 2A:81-7, 2A:81-9 and 2A:81-10 of Title 2A of the New Jersey Statutes."

The italics of all of the foregoing, of course, is supplied by the Court.

As can be seen from the quoted sections, the new Rules of Evidence (N. J. R. S. 2A:84 A-17, etc.) do not operate to repeal any statutes by implication. (2A:84 A-16.)

Previous laws identified by footnotes are to be affected by the new rules. (2A:84 A-40.) The particular section of the New Jersey statutes affected is 2A:81-3, etc.

The Waterfront Commission Act is not affected by these new rules. It is not repealed by implication. It constitutes a statute governing and regulating the waterfront and as such is provided for by 2A:84-19(c), wherein is (38) stated:

"No person has a privilege to refuse to disclose any matter which the statutes or regulations governing his office, activity, occupation * * * require him to disclose."

One of the main arguments advanced by the defendants is that the immunity must be coextensive with the privilege. New Jersey could never grant federal immunity as the [fol. 234] Legislature has no power so to do. If this contention is correct, then the State could never grant immunity. It is not essential that for the purpose of conferring immunity federal immunity must also be conferred.

Rule 24 of the Rules of Evidence expressly provides that those rules do not operate to repeal any statutes by implication.

"The enactment of the rules set forth in this Act or the adoption of rules pursuant hereto shall not operate to repeal any statutes by implication." (R. S. 2A:84 A-16(4).)

It is to be further noted that in the report of the Legislative Commission to study the improvement of the law of evidence, page 15, 1956, it states:

(39) "This paragraph has the effect of continuing all existing statutes. This Commission feels that it is necessary to review the New Jersey Statutes in detail and to specifically treat each such statute dealing with evidence. Otherwise, a wholesale repeal of many statutes, without consideration of all the implications, would result."

Our Supreme Court referred to this report interpreting the rules of evidence. *Nussbaum versus Newark Morning Ledger Company*, 33 N. J. 419, 424 (1960).

Thus it is seen that the privilege against self-incrimination which the defendants are relegated to invoke by the statutory law of New Jersey deal only with a privilege against incrimination dealing with the state. By virtue of the Waterfront Compact this is extended to New York, which has passed the Waterfront Commission Act. (N. Y. Law 1953, 882.)

In the case of the *State of New Jersey versus Francis Murphy, et al.*, decided in the last few weeks, in an opinion by Chief Justice Weintraub, he said:

"In short, the States did not create a (40) governmental authority and cut the umbilical cord, if, indeed, constitutionally they could. As the agent of each state, the Commission is subject to all of its laws, whether of statutory or [fol. 235] common law origin, excepting insofar as the States agreed expressly or by fair implication to place it beyond them."

I find the grant of immunity offered to the defendants under N. J. R. S. 32:23-86 is co-extensive with the privilege against self-incrimination which they may invoke.

The fact that the immunity granted does not extend to immunity from federal prosecution does not affect the constitutionality of the statute granting immunity.

See *Feldman versus United States*, 322 U. S. 487, 491, citing *Jack versus Kansas*, 199 U. S. 372, 380, wherein it is stated:

"This court (U. S. Supreme Court) has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it

will incriminate him, and also that the lack of state power to give witnesses protection against (41) federal prosecution does not defeat a state immunity statute • • • "

See *Knapp versus Schweitzer, Judge of the Court of General Sessions, et al.*, 357 U. S. 371.

The respondents and witnesses, Murphy and Moody, have taken the stand in an attempt to pinpoint the federal criminal involvement which they fear.

See *In re Boiardo*, 34 New Jersey 599 (1961).

It is incumbent upon these witnesses to show that there is a reasonable basis for such fear of criminal involvement. This testimony is difficult to believe in the light of the respondent Murphy's statement to his attorney, Mr. Wall. See Exhibit C to the Commission's motion herein, page 30a, where he contended that a labor dispute existed cognizable by the National Labor Relations Board and this negatives the possibility of the work stoppage involved being a part of a conspiracy to commit theft from Interstate Commerce or extort money or otherwise involve a violation of the Federal Criminal Code.

See pages 7, 8, 9, 10, and 11 of the Commission's reply brief.

[fol. 236] (42) All briefs, including the one just mentioned, are, of course, in evidence.

It is to be noted that the Waterfront Act was passed primarily to eliminate criminal domination of waterfront labor, that its passage followed extensive study of waterfront conditions by New York, New Jersey, and Congress. Its provisions must be interpreted in the light of its extensive legislative history. Its provisions are to be given effect.

The interpretation these witnesses would have the Court give to its provisions as to the compelling of attendance and testimony of witnesses by subpoena and the granting of immunity from self-incrimination would render it useless and powerless to effectuate the purposes for which it was designed.

For the reasons above stated the Court is constrained to find both Messrs. Murphy and Moody guilty of contempt, civil and criminal, this being both civil and criminal contempt.

The defendants' motions which the Court has before it for consideration, naturally, will be denied. Those motions were motions directed to the discretion of the Court. However, the (43) disposition of the matter on its merits finally disposed of them, but even in the exercise of discretion, none of those motions would be granted by this Court. So all the other motions are respectfully denied.

The Court will defer the imposition of sentence of these defendants for one week from today in order to secure a pre-sentence report from the Probation Department, and I will request that counsel arrange to be here one week from today at 9:30, with the defendants present, of course.

Mr. Krieger: May I, for the record—I understand your Honor is not fixing a trial on either the civil or criminal contempt and makes a finding on these issues without trial?

The Court: Yes.

Mr. Krieger: Are we excused now?

The Court: Yes.

[fol. 237]

IN THE SUPERIOR COURT OF NEW JERSEY

DEFENDANT'S MOTION TO QUASH SUBPOENAS, ETC.

To: Robert A. Pin, Esq., Attorney for Waterfront Commission of New York Harbor, 15 Park Row, New York City, New York.

Sir:

Please Take Notice that on Friday, the 3rd day of November, 1961, the undersigned shall move before the Superior Court of New Jersey, at the Court House, Jersey City, Hudson County, New Jersey, at 9:30 a.m. in the forenoon, or as soon thereafter as counsel can be heard, for an Order quashing the subpoenas which have been issued heretofore, requiring the attendance of William Murphy and John Moody, Sr. before the Waterfront Commission of New York Harbor at their offices 15 Park Row, New York City, New York.

1. That the said Waterfront Commission of New York Harbor have abused the said process issued by them.

2. That the said William Murphy and John Moody, Sr. have on numerous occasions responded to the said subpoenas.

3. That the said Waterfront Commission of New York Harbor has failed and refused to set forth purposes and objects, nor submitted evidence for an investigation to be had.

4. The said Waterfront Commission has acted in violation of the constitutional rights of said William Murphy and John Moody, Sr., in that they deprived the said individuals of the due process of law.

[fol. 238] 5. The said Waterfront Commission has endeavored to grant to the said individuals what they referred to as immunity from prosecution.

6. The said actions of the Waterfront Commission in endeavoring to grant immunity is contrary to law and they are without power.

7. The statute relied upon by the Waterfront Commission is in violation of law and unconstitutional.

8. That the said Waterfront Commission has refused to make available a copy of the record or statement of the individuals heretofore given by the said individuals.

9. The Waterfront Commission is attempting to enlarge the judgment of this Court and the Supreme Court of the State of New Jersey, in endeavoring to go beyond the order of this Court and the mandate of the Supreme Court in its remand.

10. The questions involved in the original matter before this Court have been duly exhausted and disposed of and the very questions involved having been answered by the purging of the contempt.

11. The attempt made by the Waterfront Commission to enlarge the Subpoena beyond that which was before the Courts and determined in this issue, is improper and illegal and the Subpoena has been completely exhausted.

And for such other good and sufficient cause as may be moved at the trial.

Krieger & Chodash, Attorneys for William Murphy and John Moody, Sr., By: Harold Krieger.

[fol. 239]

IN THE SUPERIOR COURT OF NEW JERSEY

AFFIDAVIT OF ROBERT H. WALL IN SUPPORT OF MOTION

STATE OF NEW JERSEY
COUNTY OF HUDSON, SS.:

Robert H. Wall, being duly sworn according to law upon his oath, deposes and says:

1. I am one of the attorneys representing the said William Murphy and John Moody, Sr., the defendants in the within cause of action.

2. On numerous occasions I appeared on behalf of one or both of the said individuals before the Waterfront Commission of New York Harbor, at 15 Park Row, New York City, New York, in response to a subpoena that was issued and served upon the said individuals.

3. I am associated with Harold Krieger, Esq. as co-counsel representing the said named individuals, William Murphy and John Moody, Sr..

4. On the 3rd day of October, 1961, I appeared together with Harold Krieger, Esq., before the Waterfront Commission and all questions that were propounded to the said individuals were answered by them. The said individuals were available for all questions that were to be propounded to them and such representations were made to the Waterfront Commission as well as to the Court.

5. On the aforesaid date the said Waterfront Commission commented that they would secure an immunity to be given to William Murphy and John Moody, Sr., and ordered that the said individuals return on another day.

6. The matter is now being continued to October 23, 1961, at the office of the Waterfront Commission.

[fol. 240] 7. The Waterfront Commission has heretofore refused a demand made that the said individuals be given copies of statements made by them in response to the said Subpoenas.

8. The Waterfront Commission further refused to give to the Attorneys for the said individuals, copies of said record although same was used in the Courts by the said Waterfront Commission.

9. I, together with Harold Krieger, Esq., on behalf of the said William Murphy and John Moody, Sr., have demanded copies of the statements of the individuals as made by them to the Waterfront Commission and the said Waterfront Commission has refused to grant such application or make available to counsel or to the said individuals, copies of the said statements.

10. The Waterfront Commission had denied to the said individuals due process of law and the constitutional rights to which the individuals have been abridged by the Waterfront Commission, and their attempt to use the Subpoena at this time is the abuse of process by them.

11. The Waterfront Commission under the law have the right to issue subpoenas, but the issuing of said subpoenas cannot be abused, nor does the law give the right to abuse the use of the subpoena powers.

12. The Waterfront Commission in an article released in a local newspaper stated that immunity would be granted to the said individuals to compel them to answer questions heretofore asked and to deprive them of their use of constitutional privileges against self-incrimination.

12A. The individuals have fully complied with the Subpoenas heretofore issued, as well as the order of the Court [fol. 241] and have been purged of any contempt by order of the Court. In that, the Court made a finding that the individuals have answered as required by law.

12B. The mandate of the Court having thus been fully complied with, the application of the Waterfront Commission herein for further testimony under said subpoena is an

illegal attempt to enlarge the mandate of this Court beyond the scope of the issues fully litigated in this proceeding.

13. The Waterfront Commission is endeavoring to grant immunity by reason of statutory provisions. The said provision is unconstitutional and illegal, in that the same is contrary to law and the Waterfront Commission as an agency of the State of New Jersey has no right to grant immunity and that any provision of law which would permit such actions of the Waterfront Commission would be improper and a violation of law.

(a) Under the law of the State of New Jersey neither the Attorney General of the State of New Jersey, a Prosecutor or a Grand Jury can grant immunity.

(b) Further, the Waterfront Commission is without power to act on behalf of the United States of America in the granting of an immunity, nor do they have the power and statute to do so.

14. A full examination of the record heretofore made will indicate the questions and their imputation.

15. An Order should be entered in this matter quashing the Subpoenas referred to.

Robert H. Wall

(Sworn to October 23, 1961.)

[fol. 242]

IN THE SUPERIOR COURT OF NEW JERSEY

Excerpts From Sentence Proceedings

Before:

Hon. Joseph L. Smith, J. S. C.

APPEARANCES:

* * * * * * *

(2) Mr. Krieger: We are here in response to your Honor's direction, sir.

The Court: Well, I assume the Waterfront Commission will move?

Mr. Pin: Pursuant to your Honor's direction, sir, we now move for the imposition of sentence in the matter of the application of the Waterfront Commission to punish John Moody, Sr., for failure to obey a subpoena and in the matter of the application of the Waterfront Commission to punish William Murphy for failure to obey a subpoena.

The Court: Have you any recommendation or suggestion?

Mr. Pin: Not as to specific penalty, sir.

The Court: What is that?

Mr. Pin: Not as to specific penalty. However, I do recommend that consideration be given to the fact that this matter has been pending for a period of a year and a half and I consider this to be one of the most flagrant challenges to the dignity and standing of the Waterfront Commission, which, under the Statute, has to be considered as an affront to the dignity of this Court. In view of the fact that this (3) is unquestionably deliberate and intentional, I urge this Court to make such punishment as shall be commensurate with the offense and keeping in mind the fact that this may very well serve as a deterrent to others in similar circumstances. I ask for substantial imposition of punishment.

The Court: What do you mean, not as to specific penalty?

Mr. Pin: As to any terms, as to a period of confinement, or the amount of fine. The Waterfront Commission respect-[fol. 243] fully declines to ask for any specific amount of penalty of incarceration as to time or fine as to amount.

The Court: Well, you concede that there has to be a specific period of confinement under the criminal contempt?

Mr. Pin: Yes. That is our position, sir.

The Court: All right, gentlemen.

Mr. Krieger: I speak now for both Murphy and Moody because they are both in the same position. Counsel merely indicated as far as Murphy is concerned. I assume what he said as far as Murphy also applies to Moody. They are both defendants or respondents in this cause.

(4) I don't want to take any further time than has been taken in the argument of this matter. I don't intend to do so this morning. I think I indicated at the time your Honor

disposed of this matter, which has been disposed of on a motion to quash the subpoenas as well as a motion by the Waterfront Commission to determine whether there is criminal and civil contempt, or any contempt—your Honor determined on motion they were guilty of criminal and civil contempt.

I merely want to say this: I think your Honor, in his wisdom, in his judgment, knows even though the Waterfront Commission states that this matter is pending a year and a half from its original inception, as he puts it, I respectfully contend that this matter is not pending a year and a half. What may have transpired in May of 1960 had no application to the issue involved because your Honor in October of 1961 had purged both of these defendants of contempt in that they had complied with the order of this Court.

Now, what happened subsequently in their endeavor, that is, the Waterfront Commission's (5) endeavor, to extend immunity upon the assertion by the defendants of self-incrimination under the Statute, I say that the same constitutes a novel situation in that this Statute of immunity insofar as its application to our Statute of privilege has [fol. 244] never been determined by the Courts of this state. Neither the Nussbaum case or the Boiardo case, neither one of them, neither case, had disposed of that question because that question was not before our courts.

Now, surely, these defendants have a right, a constitutional right, to assert a constitutional right, and for the assertion of a constitutional right or statutory right they are not punished. There was no contempt of this Court because there has been no order by this Court made at any time compelling these individuals to answer these questions based upon their assertion of privilege under these circumstances.

I have too much respect for your Honor to quarrel or find fault with the disposition except to say as a lawyer representing both of these defendants that I firmly disagree (6) with the Court. I think the Court realizes that. I made my position clear in that respect. I have my opinion as a lawyer in representing these people, that they have been

deprived of their respective rights under the disposition of this case.

However, on the question of sentence, I don't think a sentence could be entered in this case or sustained in this case based upon the facts that appear before the Court, on the motion argued. I don't think there should be a sentence and any sentence that could be imposed at this time would be a violation of their rights.

I might also urge your Honor, insofar as these individuals are concerned, so your Honor will know, they have never been in contempt of this Court as such, insofar as the order is concerned, insofar as this incident of October, 1961. They have never been adjudicated in that respect; they have never been directed in that respect by the Court. The Waterfront Commission of New York Harbor is not a court of law of the State of New Jersey. It is not in the category of a court. (7) It is an administrative agency, so held by [fol. 245] our courts. It is strictly and purely and simply an administrative agency, and that is all it is, and they couldn't be in contempt of the Waterfront Commission of New York Harbor.

Now, I might further say, as far as Murphy and Moody, neither one have ever been convicted of anything. Both are respectable individuals. They work for a livelihood and they have never been confined to any institution because of any violation of any law, never been sentenced or found guilty of any law.

I say to your Honor very frankly just to punish these people when they feel they have a right and they want to assert a right and because they assert a right and the assertion of the right carries with it a punishment, I know that your Honor will not adhere to such a policy.

Now, there is nothing in our law—and I want to say to counsel—I don't know of anything in our law which requires a court to sentence any individual to a jail term under the criminal contempt at all. That is discretionary with the Court. Subject to the (8) Statute, the Court has a right to suspend the operation of any sentence, and there are cases on that, sir.

I respectfully leave it to your Honor's discretion under all these circumstances.

The Court: Mr. Wall?

Mr. Wall: That covers all sides of it, sir. I have nothing to say.

The Court: Counsel will note from the memorandum which the Court orally gave in this case, consisting of 43 pages, that the Court took pains to set out at length the questions that were asked of these witnesses on the three dates on which they appeared in answer to the subpoenas, namely, May 19, 1960, October 3, 1961, and October 27, 1961. The purpose of the Court in setting forth these questions in the memorandum was to show that each of these witnesses was asked substantially the same questions three times and [fol. 246] on three different occasions the witnesses refused to answer the questions.

The Court is fully cognizant and subscribes to defense counsel's argument that these witnesses had a perfect right to interpose whatever (9) legal objections were at their command to their not answering any of these questions, and this Court in no sense is taking into consideration, in imposing any sentence on the finding of their being guilty of contempt in the present proceeding, any objections which they interposed, which they had a perfect legal right to do at the time these questions were propounded to them.

However, I am constrained to believe that there has to be and there now is, at least for the present, an end to these witnesses being asked these questions. The first order of contempt, of which they purged themselves in accordance with the very statement of the Waterfront Commission examiner, the first order of contempt was June 20, 1960. The second order of contempt was the order now before this Court for the passing of this sentence.

The Court has found both of these witnesses guilty of both civil and criminal contempt.

There is nothing more unpleasant to any Court than the imposition of sentence. It certainly is not anything that this Court has any liking for doing, the imposition of sentence. It never has, and I can't see any reason why (10) any Court should look forward to the time when a sentence is to be imposed by the Court. However, Courts have to impose sentences. That is the law.

I, therefore, will ask that an order be prepared in the body of which order is set out verbatim the very questions that were asked of these witnesses at the hearing which is now before this Court. I want those questions set out and the date they were asked set out and the action of the witnesses in response to those questions; then the finding of the Court in the order that they were found guilty of contempt.

[fol. 247] I want a provision in the order that the Court orders those witnesses to responsively answer those questions by order of this Court, and the Court will impose a sentence on these witnesses of a fine of $50.00 and a confinement of thirty days, and a warrant will issue, accordingly. That will be the terms of my sentence.

Now, in addition to that, gentlemen, I might say this: That if the terms of the provisions of the order are met by the witnesses making responsive answers to these questions (11) which will be enumerated, no doubt then application would be made to a court for a purging of the contempt, which could then be followed by a court's power to change the sentence imposed, and if that event comes about, this Court has no objection to any other judge who may sit in the matter exercising his proper judgment and discretion in passing upon such an application, because this Court itself may not be sitting at that time. I want that clearly put on the record.

I am very grateful to counsel in this case. It was most strenuously presented to the Court. Not only was it strenuously presented but presented most vigorously, most intelligently, and most helpfully to the Court. It was a very difficult matter for this Court to determine. Naturally, it took a great deal of time of this Court to give consideration and thought to the several questions that were propounded and raised and presented to it for determination; and that is why my memorandum is rather longer than my memorandums usually are, because it was a memorandum which I thought at least should try to answer as many of the points that were presented to me (12) as seemed to me of any importance. I am very grateful to all counsel for their attention in this matter.

Mr. Krieger: For the record, may I say this? May I merely request your Honor to fix bail pending appeal, reasonable bail pending appeal? We are entitled to bail as a matter of right.

[fol. 248] The Court: What bail was fixed the last time?

Mr. Krieger: Five hundred dollars.

The Court: I'll fix the same bail. No objection to that, is there, counsel?

Mr. Pin: That will be satisfactory.

• • • • • • • • •

(14-6) Mr. Krieger: I am sure counsel does not want to deprive the defendants of their right of appeal.

The Court: The Court wouldn't deprive you of that. The Court would do anything it should to permit an appeal.

• • • • • • • • •

(16-12) The Court: I don't want any appellate court to get the idea that I have granted a stay because I have some thought that I am not right, because that is not so.

Mr. Krieger: I am saying on the record that I understand that, sir. Your Honor is granting the stay taking into consideration the facts and circumstances.

The Court: All right.

• • • • • • • • •

[fol. 249]

IN THE SUPERIOR COURT OF NEW JERSEY

Excerpts From Proceedings to Settle Terms of Order

December 4, 1961

Before:

Hon. Joseph L. Smith, J. S. C.

• • • • • • • • •

(18-8) The Court: Gentlemen, it was strictly my intention in imposing this sentence that these witnesses be fined $50.00 and ordered by this Court to answer these questions that they had not answered on three appearances before this Commission and to answer these questions in a responsive manner, and until they did so answer these questions in a responsive manner they were to stand committed,

as well as under the criminal contempt they were to be given a sentence of thirty days.

So I have stricken from the order submitted by Mr. Krieger the following paragraph:

"It is further ordered and adjudged by this Court that in the event that said defendant, William Murphy, purges himself of the contempt, an application may be made for a suspension of the sentence imposed."

(19) I have stricken that out of the order because there is no reason for it. If he complies with the order he may make application, if he purges himself at any time. That is the law.

I have added to that: "It is further ordered that the subpoena is to be obeyed and performed by the giving of responsive answers to the aforesaid questions before the members of the Waterfront Commission of New York Harbor or their designees appointed pursuant to the provisions of Section 3 of Article III of the Waterfront Commission Act (N. J. S. 32:23-9) and that he stand committed to the Hudson County Jail until he has complied with this paragraph of this order, as well as until such fine has been paid.

• • • • • • • •

(19-21) Mr. Krieger: That applies in both instances, I assume?

The Court: Both witnesses.

[fol. 250]

IN THE SUPERIOR COURT OF NEW JERSEY

JUDGMENT RE: JOHN MOODY, SR.—Filed December 4, 1961

This matter being opened by Robert A. Pin, Esq. Attorney for the Waterfront Commission of New York Harbor, the moving party, in the presence of Harold Krieger, Esq. and Robert Wall, Esq., Attorneys for John Moody, Sr., upon the return of an order of this court dated November 1, 1961, directing said John Moody, Sr. to show cause why he should not be adjudged guilty of criminal and civil contempt for failure to obey a subpoena issued by the Waterfront Commission of New York Harbor, an administrative

agency, and in accordance with the opinion of this court dated November 22, 1961, defendant John Moody, Sr. was adjudged guilty of criminal and civil contempt in his failure to answer certain questions as required by the subpoena, on the 27th day of October, 1961:

1. Q. "Mr. Moody, are you an official of the International Longshoreman's Association Independent or the International Longshoremen's Association which is affiliated with the AFL-CIO?"

2. Q. "Mr. Moody, I direct your attention to a work stoppage that occurred on Monday, May 16, 1960 Piers A, B, and C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that the work stoppage was to take place on Monday, May 16, 1960, at that terminal?"

3. Q. "Mr. Moody, would you tell the Commission on the source of the knowledge that you have concerning the work stoppage, Piers A, B, and C, Hoboken, May 16, 1960?"

4. Q. "Mr. Moody, did you, at any time, prior to May 16, 1960 give orders to any longshoreman, shop stewards or others to commence a work stoppage [fol. 251] on Monday, May 16, 1960, because of the presence of one James Markley on the piers as a security officer?"

5. Q. "Mr. Moody, did you have any conversations with any other union official of the International Longshoreman's Association prior to May 16, 1960 about calling a strike concerning James Markley's presence on the Hoboken Terminal as a security officer?"

6. Q. "Did you have a conversation about calling a strike during the week of May 16, 1960, with one Mr. Gleason of the I. L. A.?"

7. Q. "On the 17th of May, 1960 were you present on the terminal in Hoboken, which is called the American Export Lines Terminal? Were you present?"

8. Q. "Did you, on that date, May 17, 1960, tell the shop stewards, Frank Rump, Carmine Bruno, Eric Lempke to call the longshoremen out on strike because of the presence of Mr. Markley on the piers as a security officer?"

9. Q. "Did you attend the meeting on May 17, 1960 in the offices of the American Export Lines at the Hoboken Terminal? Did you attend such a meeting?"

10. Q. "Did you at that meeting state to Leland Andrews another official of the American Export Lines who attended the meeting, if Mr. Markley works on the piers there would be a work stoppage?"

11. Q. "Prior to May 16, 1960, or during the week of May 16, 1960, did you have a conversation with Michael McNamara, concerning a work stoppage [fol. 252] to be called on May 16, 1960, over the presence of James Markley from the Hoboken Terminal, as a security officer?"

12. Q. "Do you know Michael McNamara, Mr. Moody?"

13. Q. "Do you know Mr. William Murphy?"

14. Q. "Do you know Leland Andrews, Mr. Moody?"

15. Q. "Do you know Mr. Lyle Bul, Executive Vice President, American Export Lines?"

16. Q. "Did you, at any time, either in Hudson County, in the State of New Jersey, or in the County of New York, in the State of New York, have any discussions, with any executives of the American Export Lines, concerning Mr. Markley's employment with that shipping company?"

17. Q. "Do you know whether M. Markley has been on the piers in the performance of his duties as a security officer of the American Export Lines, since his employment in May, 1960?"

At the time of the return of the order to show cause and on the same date, there was argued a motion to quash the

subpoena of John Moody, Sr., which was consolidated with the motion of the Waterfront Commission.

There were also motions made by defendant for a jury trial and for a bill of particulars on the charge of criminal contempt and a demand for interrogatories on the civil contempt charge, which said motions were all denied by this court.

It is on this 4th day of Dec., 1961, as appears in the opinion-memorandum of this court, ordered and adjudged that defendant, John Moody, Sr., is guilty of both criminal and civil contempt, and it is the sentence of this court that said defendant be fined $50.00 and sentenced for a period of 30 days, and a warrant to issue accordingly.

[fol. 253] It is Further Ordered that the subpoena is to be obeyed and performed by the giving of responsive answers to the aforesaid questions before the members of the Waterfront Commission of New York Harbor, or their designees, appointed pursuant to the provisions of Sec. 3— Art. III of the Waterfront Commission Act (N. J. S. 32:23-9), and that he stand committed to the Hudson County Jail until he has complied with this paragraph of this order, as well as until such fine has been paid.

It is Further Ordered and Adjudged that the execution of a warrant be stayed until the disposition of the appeal in this matter, bond having been heretofore posted pursuant to the order of this court.

Joseph L. Smith, J. S. C.

IN THE SUPERIOR COURT OF NEW JERSEY

JUDGMENT RE: WILLIAM MURPHY—Filed December 4, 1961

This matter being opened by Robert A. Pin, Esq., Attorney for the Waterfront Commission of New York Harbor, the moving party, in the presence of Harold Krieger, Esq., and Robert Wall, Esq., Attorneys for William Murphy, upon the return of an order of this court dated November 1, 1961, directing said William Murphy to show cause why he should not be adjudged guilty of criminal and civil contempt for failure to obey a subpoena issued by the

Waterfront Commission of New York Harbor, an administrative agency, and in accordance with the opinion of this court dated November 22, 1961, defendant William Murphy was adjudged guilty of criminal and civil contempt in his failure to answer certain questions as required by the subpoena on the 27th day of October, 1961:—

1. Q. "Are you an official of the ILA, Independent?"

[fol. 254]

2. Q. "I direct your attention to a work stoppage that occurred on Monday, May 16, 1960 at Piers A, B, C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that a work stoppage would occur Monday, May 16th at the said terminal?

3. Q. "Mr. Murphy, when did you first hear that a work stoppage was in progress at Piers A, B, and C, Hoboken? And I am referring to the May 16th, 1960 work stoppage."

4. Q. "Mr. Murphy, who were the persons that gave you the informaton about the work stoppage on May 16, 1960 at the Hoboken Terminal of the American Export Lines?"

5. Q. "Mr. Murphy, did you, at any time, give orders to longshoremen or others such as shop stewards that a work stoppage was to take place on May 16, 1960 at the American Export Line Terminal in Hoboken?"

6. Q. "Mr. Murphy, do you know whether the work stoppage that took place on May 16, 1960 at the American Export Line Terminal was relating to the presence of one James Markley on the piers as a security officer?"

7. Q. "Mr. Murphy, did you have any conversation with any union officials of the I. L. A. prior to May 16, 1960 about the presence of James Markley on the Hoboken Terminal as a security officer?"

8. Q. "On May 16th, 1960, did you Mr. Murphy, have a conversation with one Leland Andrews concerning this work stoppage that took place on May 16, 1960 at the American Export Line Pier?"

[fol. 255]

9. Q. "Did you, in the conversation with Mr. Andrews on the 16th day of May, 1960, reach any agreement over the presence of Mr. Markley on the Hoboken Terminals of the American Export Lines in Hoboken?"

10. Q. "Mr. Murphy, on the morning of the 17th of May, 1960, were you on American Export Line Hoboken Terminal?".

11. Q. "Mr. Murphy, on May 17th, 1960, at the Hoboken Terminal of the American Export Line, did you have a conversation with one Michael McNamara?"

12. Q. "Mr. Murphy, on the morning of May 17th, 1960 at the American Export Line Terminal in Hoboken, did you have a conversation with one Frank Rump?"

13. Q. "Mr. Murphy, on the morning of May 17th, 1960, did you have a conversation with one Carmine Bruno?"

14. Q. "Mr. Murphy, on the morning of May 17th, 1960, at the Hoboken Terminal, did you have a conversation with one Eric Lempke?"

15. Q. "Mr. Murphy, on the morning of May 17th, 1960 did you have a meeting with officials of the American Export Line at the Hoboken Terminal of the American Export Line?"

16. Q. "Did you, at that time, reach any agreement concerning the presence of Mr. Markley on the Hoboken Terminal as a security officer?

17. Q. "Did you ever make any demand from any officer of American Export Line to fire Mr. Markley before the men went back to work?"

[fol. 256]

18. Q. "Did you tell any officer of the American Export Lines that the men would not go back to work until Mr. Markley was kept off the piers?"

19. Q. "Mr. Murphy, did you have a meeting with the Executive Vice-President of the American Export Line at the offices of the American Export Line at 39 Broadway in New York City in August, 1960?"

20. Q. "Mr. Murphy, did you, at that meeting with the Executive Vice-President of the American Export Line, state that if Mr. James Markley walked on Piers A, B and C in Hoboken, there would be a strike?"

21. Q. "Did you, Mr. Murphy, ever discuss or give any orders to any shop stewards or officials of your local to pull the men out of Piers A, B and C in the event Mr. Markley walked onto the piers in May of 1960 in the performance of his duty as a security officer for the American Export lines?"

22. Q. "Mr. Murphy, do you know now whether Mr. Markley has ever, since May, 1960, walked on the piers in Hoboken, New Jersey of the American Export Lines in connection with his duties as a security officer for that company?"

23. Q. "Mr. Murphy, do you know if Mr. Markley was at one time employed by this Commission in any capacity whatsoever?"

24. Q. "Mr. Murphy, did you, in August, 1960, tell the Executive Vice-President of the American Export Line that if Mr. Markley stepped on the piers there would be a walkout?"

[fol. 257]

25. Q. "In the event that Mr. Markley walked on the piers of Hoboken, New Jersey today on the American Export Lines, would you order the membership of the I. L. A. present there off the piers?"

At the time of the return of the order to show cause and on the same date, there was argued a motion to quash the subpoena of John Moody, Sr., which was consolidated with the motion of the Waterfront Commission.

There were also motions made by defendant for a jury trial and for a bill of particulars on the charge of criminal contempt and a demand for interrogatories on the civil contempt charge, which said motions were all denied by this court.

It is on this 4th day of December, 1961, as appears in the opinion-memorandum of this court, Ordered and Adjudged that defendant, William Murphy, is guilty of both criminal and civil contempt, and it is the sentence of this court that said defendant be fined $50.00 and sentenced for a period of 30 days, and a warrant to issue accordingly.

It Is Further Ordered that the subpoena is to be obeyed and performed by the giving of responsive answers to the aforesaid questions before the members of the Waterfront Commission of New York Harbor, or their designees, appointed pursuant to the provisions of Sec. 3-Art. III of the Waterfront Commission Act (N. J. S. 32:23-9), and that he stand committed to the Hudson County Jail until he has complied with this paragraph of this order, as well as until such fine has been paid.

It Is Further Ordered and Adjudged that the execution of a warrant be stayed until the disposition of the appeal in this matter, bond having been heretofore posted pursuant to the order of this court.

Joseph L. Smith, J. S. C.

[fol. 258]

IN THE SUPERIOR COURT OF NEW JERSEY

NOTICE OF APPEAL RE: JOHN MOODY, SR.—
Filed December 11, 1961

Notice Is Hereby Given that the defendant, John Moody, Sr., appeals to the Superior Court of New Jersey, Appellate Division, from the whole of the judgment of the Superior Court entered on December 4th, 1961 in favor of the Waterfront Commission of New York Harbor and against said

defendant, John Moody, Sr., adjudging him guilty of both criminal and civil contempt.

Krieger & Chodash, Esqs., Attorneys for Defendant, John Moody, Sr., by Harold Krieger.

Robert H. Wall, of Counsel.

Dated: December 8, 1961

IN THE SUPERIOR COURT OF NEW JERSEY

NOTICE OF APPEAL RE: WILLIAM MURPHY—
Filed December 11, 1961

Notice Is Hereby Given that the defendant, William Murphy, appeals to the Superior Court of New Jersey, Appellate Division, from the whole of the judgment of the Superior Court entered on December 4th, 1961 in favor of the Waterfront Commission of New York Harbor and against the said defendant, William Murphy, adjudging him guilty of both criminal and civil contempt.

Krieger & Chodash, Esqs., Attorneys for Defendant, William Murphy, by Harold Krieger.

Robert H. Wall, of Counsel.

Dated: December 8, 1961

[fol. 259]

IN THE SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION.

DOCKET NO. A- -59.

Civil Actions.

On Appeal from a Judgment of the Superior Court—Law Division, Hudson County.

Sat below: Joseph L. Smith, J. S. C.

IN THE MATTER

of

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

IN THE MATTER

of

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish JOHN MOODY, SR. for failure to obey a Subpoena.

Excerpts from Brief for Appellants, William Murphy and John Moody, Sr.

* * * * * * *

[fol. 260] STATEMENT OF FACTS

* * * * * * *

[fol. 261]

During the period commencing May 16 and ending May 25, 1960, the Commission does not allege, nor were there any acts of violence committed; there were no pickets, picketing, or demonstrations; no person was assaulted or intimidated; no crimes were committed; no property was damaged; the streets were not blocked or obstructed and traffic in and out of the piers was not impeded.

* * * * * * *

[fol. 262]

IN THE SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION.

DOCKET NO. A- -59.

Civil Actions.

On Appeal from a Judgment of the Superior Court—Law Division, Hudson County.

Sat below: Joseph L. Smith, J. S. C.

IN THE MATTER

of

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

IN THE MATTER

of

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish JOHN MOODY, SR. for failure to obey a Subpoena.

Excerpts from Appendix to Brief for Appellants, William Murphy and John Moody, Sr.

* * * * * * *

[fol. 263]

BEFORE THE WATERFRONT COMMISSION OF NEW YORK HARBOR.
Proceeding in the Matter of an Investigation Under Article IV of the Waterfront Commission Compact.

PROCEEDINGS OF MAY 19, 1960

15 Park Row, New York, New York, 3:00 P.M.

APPEARANCES:

For the Commission: William P. Sirignano, Esq., General Counsel.

Present: Myles J. Ambrose, Esq., Executive Director; Anthony L. Piazza, Esq., Assistant Counsel; James B. White, Esq., Assistant Counsel.

Witness: John Moody, Sr., 1111 Washington Street, Hoboken, New Jersey.

Attorney for the Witness: Lawrence E. Florio, Esq., 84 Washington Street, Hoboken, New Jersey.

(1) Mr. Piazza: Investigation under Article IV of the Waterfront Commission Compact.

Would you note your appearance, sir.

Mr. Florio: My name is Lawrence E. Florio, 84 Washington Street, Hoboken, New Jersey. I am an attorney and [fol. 264] in a representative capacity for and on behalf of Mr. John Moody.

Mr. Piazza: Would you raise your right hand.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Moody: Yes.

JOHN MOODY, SR., residing at 1111 Washington Street, Hoboken, New Jersey, appearing as a witness, having been duly sworn, testified as follows:

By Mr. Piazza:

Q. What is your name and address?

A. John Moody, Sr., 1111 Washington Street, (2) Hoboken, New Jersey.

Q. Mr. Moody, you are here pursuant to subpoena; is that correct, sir?

A. That's right.

Mr. Florio: Prior to the inception of the interrogation, might I ask, for the benefit of myself and on behalf of my client, what the purpose of the investigation is in order that I may so advise Mr. Moody what his rights are.

Mr. Piazza: Mr. Florio, the purpose of the investigation is to ascertain facts surrounding a work stoppage at Piers "A", "B" and "C", Hoboken, New Jersey.

Mr. Florio: Yes.

Mr. Piazza: Fair enough?

Mr. Florio: That's good enough.

Q. Mr. Moody, you are a union official?

A. Yes.

Mr. Florio: Mr. Piazza, now, I am going to make a continual objection on behalf of Mr. Moody: One, this is an investigation proceeding for the record which may in the [fol. 265] (3) future become a public document; two, it is the opinion of myself that in this matter it is strictly a matter for labor and management and that the Waterfront Agency has no jurisdiction whatsoever. It is my opinion that the purpose of the Waterfront Commission for the New York and New Jersey Port of Metropolitan Area is solely for the purpose of maintaining peace, safety, protection of crime along the waterfront and on the piers. And I reiterate that this matter does not come within the jurisdiction of the Waterfront Compact, and in that respect I will advise my client, Mr. Moody, to say nothing at this hearing.

Mr. Piazza: This is not a hearing.

Mr. Florio: Or at this—

Mr. Piazza: This is an investigation.

Mr. Florio: At this interrogation.

Mr. Piazza: This interrogation is for the purpose of collecting facts concerning (4) the work stoppage. Now, do I understand you to state essentially that we are without jurisdiction in this matter since it is a labor dispute?

Mr. Florio: A labor and a management problem as of this moment.

Mr. Piazza: What did you mean by a labor-management problem?

Mr. Florio: That there is an authority called The New York Shipping Association which has full jurisdiction over matters such as these.

Mr. Piazza: Well, I overrule your objection and I direct Mr. Moody to answer the questions when I put them to him.

Q. Now, the first question is: Are you an official of any ILA local?

[fol. 266] Mr. Florio: I must continue to advise my client to refuse to answer because of reason aforesaid.

Mr. Piazza: I overrule the objection and I direct you to answer.

(5) A. I am not answering.

Mr. Florio: For the record, there is another reason which may not be appropriate at the present time, but another reason for my insistence on Mr. Moody remaining silent: That is that in our local papers there has been reports from the executive offices or directive of the American Export Line that there may be a civil suit pending in this matter before the Commission.

Mr. Piazza: A civil suit pending here before the Commission?

Mr. Florio: No, in the matter now here before the Commission. And in that respect I too must advise Mr. Moody not to answer because this is now being taken down stenographically, it is part of an investigation and which, in my opinion, may lead to a public hearing; and in the event that Mr. Moody is called on to testify at the public hearing and he so refuses, that this record may be introduced in evidence for what (6) he says here now. And I must insist that Mr. Moody take the stand that he has taken.

Mr. Piazza: Before I proceed, Mr. Florio, I wish to instruct you that we are moving under the authority vested in this Commission under Article IV of the Waterfront Commission Compact, and under that Article, the Commission is empowered to make investigation, collect and compile information concerning waterfront practices generally

within the Port of New York District and upon all matters [fol. 267] relating to the accomplishment of the objectives of this Compact.

Mr. Florio: Would you read the objectives for the record, please.

Mr. Piazza: Well, I don't think it is necessary. They are found in Article I and—

Mr. Florio: What are the objectives?

Mr. Piazza: I don't see that I have to read them into the record at this time. They are part of the law, and based upon what (7) I said I direct Mr. Moody to answer the last question.

Mr. Florio: Well, I say—

Mr. Piazza: Would you read the last question so I know what it is.

Mr. Florio: I can reiterate the question.

Mr. Piazza: I asked the reporter. I am conducting the hearing—the investigation, rather.

(Reporter read back last question.)

Q. Mr. Moody, will you tell us what local you are an official of?

A. I am not answering no question.

Q. On advice of counsel?

A. That's right.

Q. On the grounds aforesaid?

A. I am not answering any question without my counsel.

Q. Your counsel's advice?

A. That's right.

Q. On the grounds that you already stated.

(8) Mr. Florio: I have already stated those grounds and further—

Q. I rule that those—what has already been stated as grounds are not sufficient and I direct you to answer the question put to you, Mr. Moody.

A. I am not answering.

Q. Do you have any other grounds you wish to state?

Mr. Florio: Well, I would like the purposes of this Compact read into the record at this time.

[fol. 268] Mr. Piazza: I don't think this is necessary. Any court can take judicial notice of what the law is.

Q. Mr. Moody, what position do you hold with the local of the ILA that you are affiliated with?

A. I am not answering.

Q. I direct you to answer.

A. On advice of counsel I am not answering.

Q. All right, Mr. Moody, would you tell us when you first received news of any labor trouble on Piers "A," "B" and "C" in Hoboken?

(9) A. On my counsel's advice, I am not answering.

Q. I direct you to anwser.

A. Not answering on advice of my counsel.

Q. Mr. Moody, within the last week have you attended any conferences with the officials of the American Export Line with respect to the work stoppage at Piers "A", "B" and "C" in Hoboken?

Mr. Florio: I object to this question, one, I would state that any communication between any union official or any between management and labor is certainly a privileged one and—

Mr. Piazza: Privileged on what theory?

Mr. Florio: Privileged between management and labor.

Mr. Piazza: On what theory?

Mr. Florio: Privilege between labor and management under the existing contract between the New York Shipping Association and International Longshoremen's Association.

Mr. Piazza: I know of no privilege (10) and I find your objection insufficient and defective of law and I overrule that.

[fol. 269] You must answer the question, Mr. Moody. I direct you to answer.

Mr. Moody: I am not answering on advice of my counsel.

Q. Have you had any conversations with Captain Andrews, Leland Andrews, of American Export Line with respect to the stoppage this week at Piers "A", "B" and "C" in Hoboken, New Jersey? When I say "This week," I mean from May 16th to the present.

Mr. Florio: I object to the question on two grounds: One, is that you have not laid any basis for the stoppage; two, that any conversation with Mr. —whoever you mentioned—Mr. Andrews is certainly privileged between these two gentlemen.

Mr. Piazza: I overrule the objection and direct you to answer.

Mr. Moody: I am not answering on the advice of my counsel.

Q. You understand, Mr. Moody, your refusal to answer may be subjected to a court test.

(11) A. I am still not answering on advice of my counsel.

Mr. Florio: That's in the nature of advice, I assume.

Mr. Piazza: That's correct, because you are here, you are advising him.

Mr. Florio: No, I mean the statement you made to Mr. Moody.

Mr. Piazza: That's right.

Q. Mr. Moody, have you had any discussions or conversations with Captain Blackledge of the American Export Lines concerning the refusal to work at Piers "A", "B" [fol. 270] and "C" of longshoremen in that particular—on those particular piers this week?

Mr. Florio: I must object again for the reason aforesaid: That this is not a matter to come under the jurisdiction of this Agency—pardon me—Administrative Agency.

Mr. Piazza: I overrule the objection.

I direct you to answer.

Mr. Moody: I am not answering on advice of my counsel.

(12) Q. Have you had any conversations with Michael McNamara, Senior Hiring Agent of the American Export Lines, concerning the work stoppages at Piers A, B, and C that have occurred since May 1, 1960 to the present?

Mr. Florio: I object to that question because—

Mr. Piazza: Same grounds?

Mr. Florio: No. You haven't laid any foundation that since May 1st there has been any work stoppage. You haven't laid the foundation to nothing. You want to know conversations—

Mr. Piazza: Mr. Florio, if there is to be a foundation there has to be answers to questions. There have been no answers to any questions and therefore I overrule your

objection as insufficient in law and I direct Mr. Moody to answer.

Mr. Moody: I am not answering on the advice of my counsel.

Q. Mr. Moody, have you at any time, either prior to the work stoppage which commenced on May 16th, 1960 or before that time or after that time, did you at any time (13) issue orders for a work stoppage at Piers A, B and C?

A. I am not answering on advice of my counsel.

[fol. 271] Q. I direct you to answer, Mr. Moody.

Mr. Florio: At direction of the Commission, I would suggest that you answer the question.

Would you repeat the question.

(Reporter read back last question.)

Mr. Florio: Well, I am going to object to that question as being too broad in scope.

Mr. Piazza: Is that the ground of your objection?

Mr. Florio: Yes.

Mr. Piazza: I overrule the objection.

I direct you to answer.

Mr. Moody: I am not answering on the advice of my counsel.

Q. Did you, before May 16th, ever give any orders for the commencement of a work stoppage at Piers A, B and C?

Mr. Florio: I object to that question as being too broad in character. Mr. Moody has been a union official for a number of years, and prior to May 16 would entail 20 to 25 years (14) of union officialdom, so to speak, and I would ask you to fix the time.

Q. I am referring specifically to the work stoppage that took place on May 16 to the present time?

A. I am not answering on advice of counsel.

Q. Have you since May 16, in other words, May 16, May 17, May 18 and May 19, have you on these particular days issued any instructions concerning work stoppages, any instructions, now both either commencing or ceasing the stoppage at Piers A, B and C, Hoboken?

A. I am not answering on the advice of my counsel.

Q. I direct you to answer.

A. I am not answering on advice of my counsel.

[fol. 272] Q. Have you had any conversations with anyone since May 16th, 1960 to the present concerning the work stoppage at Piers A, B and C?

A. I am not answering on the advice of my counsel.

Mr. Florio: And I object to the question as being too broad in scope.

Mr. Piazza: I overrule the objection and direct you to answer.

Mr. Moody: I am not answering on advice of my counsel.

(15) Mr. Piazza: We will have a five minute recess.

(Recess held.)

(At this point Mr. Ambrose, Executive Director; Mr. Sirignano, General Counsel, and Mr. White, Assistant Counsel entered room.)

Mr. Piazza: Mark the appearance of Mr. Sirignano, General Counsel.

By Mr. Sirignano:

Q. Mr. Moody, I understand that you have taken the position that you are not going to answer any questions here; is that correct, sir?

A. That's correct.

Q. Do you understand that we are conducting an investigation to determine whether any violations of the Compact are being committed in connection with the present work stoppage at the American Export Lines at Piers A, B and C in Hoboken? You understand that?

Mr. Florio: He has been so advised, Mr. Sirignano.

Q. And that in connection with that investigation you have been subpoenaed here and you are here pursuant to a subpoena; is that correct, sir?

(16) A. It must be.

[fol. 273] Q. And you are represented by counsel?

A. That's right.

Q. And Mr. Piazza has put certain questions to you; is that right?

A. Correct.

Q. Now, you have refused to answer those questions, and what are your grounds, please?

A. On advice of my counsel.

Q. That's not a legal ground. Do you want the counsel to state the grounds for you?

Mr. Florio: I have already made a continuing objection. Would you read it from the record, please.

Would you note the appearance of two other gentlemen in this room.

Mr. Sirignano: Myles Ambrose, Executive Director and Mr. White, Assistant Counsel.

As I understand, Mr. Florio, your objection to the questions that were asked Mr. Moody is on the grounds that we lack jurisdiction in this matter; is that correct? You are not claiming or Mr. Moody is not claiming any rights against (17) self-incrimination; is that correct?

Mr. Florio: Not at this time.

Mr. Sirignano: At this time you are not claiming any such rights?

Mr. Florio: When the question arises and we feel any questions would involve any self-incrimination to Mr. Moody, I will so advise him.

Mr. Sirignano: You are now objecting solely to the jurisdiction of this Commission to conduct this investigation?

Mr. Florio: Right.

Mr. Sirignano: We make note of your objections, Mr. [fol. 274] Florio, and we direct Mr. Moody to answer. Now, do you want to proceed with the interrogation? Your objection is on the record. He is directed to answer at this point.

Q. Now, Mr. Moody—

Mr. Florio: At whose direction?

Mr. Sirignano: I am directing him to answer.

Q. What is your function with the local in Hoboken?

(18) A. I refuse to answer on my counsel's advice.

Q. You are directed to answer. That's not legal grounds.

A. I am not answering.

Q. You refuse to answer?

A. That's right.

Q. And if I ask any further question you will take the same position?

A. That's right.

Q. You are not claiming the fifth amendment to the Constitution about the right of self-incrimination, are you, to this question?

Mr. Florio: What question?

Q. What is your position with the union?

A. I am not answering on advice of my counsel.

Q. You understand, Mr. Moody, that refusal to answer on a non-legal ground subjects you to a contempt proceeding; you understand that, do you not?

A. I am not answering on advice of my counsel.

Q. Mr. Moody, were you present at Piers A, B and C, Hoboken, on Monday of this week?

Mr. Florio: That question has already been asked, Mr. Sirignano, and it has been answered (19) in the previous—

Mr. Sirignano: Do you mean it hasn't been answered and [fol. 275] you are refusing to answer the question as previous? You are refusing to answer that question on the same grounds?

Mr. Florio: Yes, sir.

Q. Were you at the piers on Tuesday?

Mr. Florio: That's repetitious and the whole issue has been gone into on one occasion and you have had the same response.

Mr. Sirignano: Mr. Florio, the question becomes repetitious when an answer hasn't been made here. We have no answer, as I understand it.

Mr. Florio: I understand that, but you have the answer.

Mr. Sirignano: You already have an objection?

Mr. Florio: I am making an objection further and continuing along the same line as aforesaid.

Mr. Sirignano: On the lack of jurisdiction of this Commission to ask these questions?

(20) Mr. Florio: There is another reason in there too that hasn't been read by the stenographer.

Mr. Sirignano: Would you care to reiterate?

Mr. Florio: It's in the record.

Mr. Sirignano: State it, please, it will save reading of the record again.

Mr. Florio: There has been talk, solely in the talking stage now and it has been promulgated in our local newspapers in New Jersey that the officials of the American Export Lines have intentions of beginning a civil suit against locals involved here, and I know from experience that while this is an investigation and so-called secret investigation, the records are being kept secret, that there may be a hearing and at some future time will prejudice Mr. Moody's interest if these answers that he may give become public. [fol. 276] Mr. Sirignano: In other words, it is your objection there may be a future civil suit?

Mr. Florio: That's right. And if he answers here they may adversely use those questions in that civil suit.

(21) Mr. Sirignano: Your objection is overruled. You are directed to answer.

Mr. Moody: Not answering on advice of my counsel.

Q. You take the same position?
A. That's right.

Mr. Sirignano: No further questions. You are excused. (3:31).

AFFIDAVIT OF JOHN MOODY, SR.

John Moody, Sr., of full age, being duly sworn according to law upon his oath deposes and says:

1. I deny the allegations of paragraphs 5 and 9 of the Motion papers filed herein.

2. I deny the allegations of paragraphs 13 and 14 of the Motion papers filed herein.

3. I deny the assertion set forth in paragraph 2 of the Affidavit of William P. Sirignano.

John Moody, Sr.

Sworn and subscribed to before me this 1st day of June, 1960.

Margaret C. Kelly, A Notary Public of New Jersey.

[fol. 277]

IN THE SUPERIOR COURT OF NEW JERSEY

LAW DIVISION, HUDSON COUNTY

Docket No.

IN THE MATTER

of

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

ANSWERING STATEMENT AND AFFIDAVIT OF WILLIAM MURPHY —Filed June 7, 1960

1. William Murphy is Business Agent for Local 2 of the International Longshoremen's Association.

2. William Murphy has never been convicted of a crime, and in spite of his being acquitted of a charge, the Waterfront Commission of the Port of New York arbitrarily denied him the right to work on the waterfront. This is ex post facto, for even in view of an acquittal by a jury, the Waterfront Commission of the Port of New York saw fit to punish William Murphy even though he is innocent.

3. There exists a contract between the American Export Lines and Local 2 of the International Longshoremen's Association and said contract covers any and all labor problems together with a method of resolving same. The National Labor Relations Board has full control and jurisdiction of any labor disputes.

[fol. 278] 4. The Waterfront Commission of the Port of New York does not have any jurisdiction of any labor problems by Statute 32:23-1 et seq. It appears in the Notice of Motion and more particularly, Paragraph Two thereof, that it has dependent for its jurisdiction in this matter, on a report of the New York State Crime Commission, which report was filed prior to the enactment of the Waterfront Commission Statute in New Jersey.

5. There does not exist any accusation or charges setting forth a reason for intermeddling in a purely labor situation, in fact, William P. Sirignano, General Counsel and Hearing Officer in the instant matter, so stated at the hearing.

6. William Murphy appeared, was sworn and answered certain questions, contrary to the allegations as made in Paragraph Thirteen of the Notice of Motion. William Murphy qualified his refusal to answer stating that he was threatened with a suit, that a labor dispute was in progress and he felt that any requirements to answer would deprive him and the members of Local 2 aforesaid, of their rights under the Fourteenth Amendment of the Constitution of the United States, and further, that the Waterfront Commission of the Port of New York had no jurisdiction in the labor problem. In this way, he legally qualified his reasons for not answering the questions asked.

7. William Murphy is not registered or licensed by the Waterfront Commission of the Port of New York, and, therefore, in accordance with Paragraph Nine of the Notice of Motion in which the Commission states that it "desired to determine whether any persons registered and licensed by the Waterfront Commission are participating in such legal coercion." William Murphy does not come under the control of the Waterfront Commission of the Port of New York. The only reference to any jurisdiction of the Port of [fol. 279] New York concerning labor and labor representatives as such, is to be found in N. J. R. S. 32:23-10, Paragraph 12: "To advise and consult with representatives of labor and industry * * * " etc.

8. In conclusion, it is apparent that a labor dispute exists under full control of the United States Government, National Labor Relations Board, and to allow the Waterfront Commission of the Port of New York to intermeddle, would lead to the impairment of the existing contractual relationship between Labor and Management.

Robert H. Wall, Attorney for William Murphy.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, ss.:

William Murphy, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am Business Agent of Local 2 of the International Longshoremen's Association.

2. The facts and matters set forth in the foregoing Answering Statement are true, to the best of my knowledge and belief.

William Murphy.

Subscribed and sworn to before me this 25th day of May, 1960.

Joan M. Hogan, Notary Public of New Jersey.
My Commission Expires Aug. 24, 1961.

[fol. 280]
BEFORE THE WATERFRONT COMMISSION OF NEW YORK HARBOR

Proceeding in the Matter of an Investigation Under Article IV of the Waterfront Commission Compact

---

PROCEEDINGS OF MAY 19, 1960

15 Park Row, New York, New York, 3:00 P.M.

APPEARANCES:

For the Commission: William P. Sirignano, Esq., General Counsel.

Present: Myles J. Ambrose, Esq., Executive Director; Anthony L. Piazza, Esq., Assistant Counsel; James B. White, Esq., Assistant Counsel.

Witness: William Murphy, 218 Roosevelt Street, Union City, New Jersey.

Attorney for the Witness: Judge Robert Wall, 880 Bergen Avenue, Jersey City, New Jersey.

(1) Mr. Sirignano: May we note the appearances, please.

Mr. Murphy: Mr. William Murphy.

Judge Wall: William Murphy.

[fol. 281] Mr. Sirignano: And, you're represented by Counsel, Mr. Murphy?

Mr. Murphy: That's right.

Mr. Sirignano: And your Counsel's name is?

Mr. Murphy: Robert Wall.

Mr. Sirignano: May we have your address?

Judge Wall: 880 Bergen Avenue, Jersey City.

Mr. Sirignano: You are present in the room here; is that right?

Judge Wall: Yes.

Mr. Sirignano: Mr. Murphy, you're here pursuant to a subpoena; is that correct, sir?

Mr. Murphy: That's right.

Mr. Sirignano: Would you kindly raise your right hand.

Do you solemnly swear to tell the truth, (2) the whole truth and nothing but the truth, so help you God?

Mr. Murphy: I do.

William Murphy, residing at 218 Roosevelt Street, Union City, New Jersey, appearing as a witness, having been duly sworn, testified as follows:

By Mr. Sirignano:

Q. Mr. Murphy—

Judge Wall: Just a minute.

Pardon me, Mr. Sirignano, would you kindly outline the purpose of this meeting?

Mr. Sirignano: Yes.

Judge Wall: For the purpose of the record.

Mr. Sirignano: This is an investigation pursuant to the [fol. 282] powers vested in the Commission in the Waterfront Commission Compact, to determine whether there are any violations of the Waterfront Commission Compact in the pending work stoppage at the (3) Hoboken Piers.

Judge Wall: In a pending work stoppage?

Mr. Sirignano: Yes.

Judge Wall: There are no accusations existing.

Mr. Sirignano: That is an investigation, Judge Wall. At the present time there are no accusations made against any person subject to the jurisdiction of this Commission.

Judge Wall: Now, what I would like to know is: Is this a labor dispute, strictly and purely?

Mr. Sirignano: Mr. Wall, we are conducting an investigation to determine the true nature of this work stoppage.

Judge Wall: To determine the true nature?

Mr. Sirignano: Until we get the facts, we will be unable to determine that.

Judge Wall: I don't know too much about this. I came here kind of quickly. But, I read the papers and I understand that the president of a shipping company has (4) made a statement that he intends to sue Mr. Murphy and —what's the local?

Mr. Murphy: 306 and 881.

Judge Wall: 306 and 881. In view of the pending litigation, I would think it would put Mr. Murphy in a very bad position to give any testimony, because there has been a threat of suit and this testimony may be basis for a suit. If there is any basis, it may arise here. And that in itself would jeopardize this man's rights under the 14th Amendment.

Mr. Sirignano: Judge Wall, you are saying now that because any statement he may give would prejudice his right in some civil litigation that you are advising your [fol. 283] client not to answer questions of a Governmental agency in a duly constituted investigation?

Judge Wall: I'm advising him that his rights should be protected under the 14th Amendment in view of the threats of action by a party to this particular situation.

Mr. Sirignano: Judge Wall, this is a Governmental agency and the actions of this (5) agency in conducting an investigation, cannot, in any ways be affected by the intentions of private people.

Now, we're conducting our investigation here. Mr. Murphy has certain rights granted under the Constitution. Where they apply to our investigation, they'll be respected.

There's no relevancy between a pending suit between private litigants and an investigation conducted by this Commission.

Judge Wall: But I don't see where there's any relevancy concerning a labor dispute with this particular Bi-State agency. I think it's an NLRB situation.

Mr. Sirignano: That is what we are asking questions to determine, the true nature of this work stoppage, to see whether it's a labor dispute or whether there's violations of both the criminal law or the compact.

Now, we're not going to know that until we get the facts from all sources and Mr. Murphy is one of the sources.

Judge Wall: Well, there's nothing wrong here, you say, except a work stoppage?

(6) Mr. Sirignano: I didn't say anything of the sort. I don't know if there is anything wrong at this point. We haven't got all the facts yet.

[fol. 284] Judge Wall: Is there any basis to hold the investigation and not let this matter go through its proper channels with the National Labor Relations Board? That's a Governmental agency.

Mr. Sirignano: This Commission has the power to conduct an investigation regardless of the authority or the jurisdiction of the National Labor Relations Board if it effects the Compact.

Judge Wall: Provided that they do not infringe upon a man's rights. I mean we have to protect the man's rights.

Mr. Sirignano: That's absolutely right, but the rights you raised are that he is not protected. He is to answer questions or to claim the right of self incrimination. But if you raise an objection against if because he might be adversely effected in a civil litigation, that is no bar to his (7) testifying here.

Judge Wall: Well, I don't agree with you. I'd like an opportunity to check it.

Mr. Sirignano: A work stoppage is pending. It's a question of finding out what the facts are, as quickly as we can, and if there's some action to be taken, we have to do it.

We cannot delay it any longer. It's already since Monday that it's going on, not yesterday or today.

Judge Wall: Well, if it's a labor dispute, Mr. Sirignano, why not let the NLRB do the job?

Mr. Sirignano: We don't know that yet.

Judge Wall: I don't think you have jurisdiction in this matter. I want to check it.

Mr. Sirignano: Mr. Wall, we may not have jurisdiction ultimately, if the facts show it's just a labor dispute, but on the other hand, we have the jurisdiction to find out [fol. 285] what the facts are, and we are having a fact finding investigation.

(8) Judge Wall: You're having a fact finding investigation to see if you have jurisdiction.

Mr. Sirignano: To see if there's any violation of the Compact.

Judge Wall: This is a labor dispute, Mr. Sirignano, and you have no jurisdiction. You're looking for jurisdiction, according to your own statement.

Mr. Sirignano: Mr. Wall, I'm going to ask Mr. Murphy some questions. You can put your objections on the record, as to whether you are going to permit him or advise him to answer the questions or not, and if we feel that after he has taken that position he is in contempt, we'll proceed to contempt. That's the choice you have to make. Either you are going to have to answer the questions or raise a rightful privilege to refuse him to answer, and I assure you he will have to answer.

Judge Wall: I note my objection on the record that this is a pure and simple labor dispute. That the Bi-State does not (9) have any jurisdiction. There are no charges pending here, and it's strictly to find certain facts out, if there are any, if they exist, to obtain jurisdiction. And, that is putting the cart before the horse, in my humble opinion.

Mr. Sirignano: Do you wish to note any further objections?

Judge Wall: That's it.

Q. Mr. Murphy, what is your present position or occupation?

Judge Wall: Where's that subpoena?

(Mr. Sirignano hands subpoena to Judge Wall.)

[fol. 286] Judge Wall: Good. Go ahead, tell him your position.

A. Business agent of Local Number 2.

Q. Is that a local that has recently been merged with 881 and another local?

A. That's right.

Q. What was the other local?

A. 306.

Q. Now, as business agent of Local Number 2 in Hoboken—is that correct?

(10) A. That's right.

Q. Are you a representative of the longshoremen who work at the American Export Line, Hoboken Piers?

Judge Wall: I'll object to that, on this theory: I think it should be rephrased— Do any of the members of his union work on that pier.

Q. I'll rephrase the question.

Do any members of your local work on the American Export Piers in Hoboken?

A. They do.

Q. And those that work there, you represent them as a union agent; is that correct?

A. At times.

Q. Well, if your fiduciary relationship to these union members to represent them in labor matters at this pier is—

Judge Wall: I object to that, the word fiduciary.

Mr. Sirignano: We'll rephrase the question.

Q. As business agent of your union, is it your (11) responsibility to represent the people working there who are members of your union in labor matters?

Judge Wall: Go ahead, answer it.

A. Yes.

Q. Now, in connection with the American Export Line are you aware that on Monday, May the 16th the men failed to show up for work?

[fol. 287] Judge Wall: I object to that.

Mr. Sirignano: What are your grounds for objection to that?

Judge Wall: He can't talk for everybody that appeared there. They might have showed up for work.

Mr. Sirignano: I'm only asking his knowledge, Mr. Wall.

Q. Are you aware that they didn't show up for work?

Judge Wall: His men, not everybody on the pier.

Mr. Sirignano: I'll rephrase the question.

Q. Do you know that the pier did not work on Monday last?

Judge Wall: Answer.

A. Yes.

(12) Q. Did you have any prior knowledge, Mr. Murphy, that the pier would not work on Monday?

Judge Wall: Did he have any prior knowledge that the pier would not work on Monday?

Answer.

A. No.

Q. What was the first you heard that things were not normal at Piers A, B and C, Hoboken, Monday morning?

Judge Wall: Answer.

A. Do you mind repeating the question?

(Question read back by the stenographer.)

A. I would say ten days previous.

[fol. 288] Q. Who was the source of that knowledge, Mr. Murphy?

Judge Wall: I'll have to object to that.

Mr. Sirignano: What's your objection this time, Mr. Wall?

Judge Wall: That's irrelevant. It has no bearing on anything.

Q. You're directed to answer the question.

A. (No answer.)

(13) Q. Mr. Murphy, are you thinking about the answer? It's been about three minutes now since I put the question to you.

Judge Wall: What's the queston?

Q. I'm asking you the question. Don't look to Counsel for answers.

Judge Wall: I objected to it. He directed you to answer. Now, it's entirely up to you.

A. Repeat the question.

(Question read back by stenographer.)

A. I don't remember.

Q. How did you find out that there would be trouble ten days later?

Judge Wall: I object to that. That's a standing objection from the beginning.

Mr. Sirignano: Your objection is noted.

Q. You are directed to answer.

A. Excuse me for a minute.

Mr. Sirignano: Yes, sir.

[fol. 289] (Off the record discussion held between (14) Mr. Murphy and his counsel.)

Mr. Sirignano: On the record.

A. It was common knowledge. It was released through some sources and everybody knew.

Q. Tell us just what you heard through common knowledge, Mr. Murphy. To be specific, was it related to the appointment of Markley as an employee of American Export Lines?

A. (No answer.)

Q. Did you understand the question?

A. I understand the question.

Q. I don't suppose it's any secret to you if everybody else was saying it on the piers?

A. That's right.

Q. So, tell us about it.

A. I got to watch what I say here.

Q. If you speak the truth, you don't have to.

A. Yes, I do, when you're doing business with people like the Export.

Judge Wall: See—you want to take this off the record? He's threatened with a suit. He's threatened with everything, as usually happens in strike situations, to get it settled. Now, for him to come over (15) here and testify when this should be before the National Relations Board, I don't think it's fair to this man.

Mr. Sirignano: Mr. Wall, what you are saying is just as a man may be sued simply for a criminal act, the criminal prosecution should stop until the civil suit is settled.

Judge Wall: No, there's no crime here.

Mr. Sirignano: We don't know, there may very well be a crime here.

[fol. 290] Judge Wall: But you're looking for jurisdiction over something. You don't know if you have it.

Mr. Sirignano: You don't know if there's a crime, only after you collect the facts and investigate.

Judge Wall: Well, it's common knowledge, what went on there. I read it in the newspaper. The first time I heard of a subpoena was yesterday when I was in court. I haven't had time to properly get into this picture.

Mr. Sirignano: Mr. Wall, we haven't (16) started on this investigation ten minutes before you came here. We've been investigating this since last Monday.

Judge Wall: Yes, but that isn't the point. I got here, and have to protect my client, and I can't protect him if I don't know what you are looking for.

Mr. Sirignano: Mr. Wall, Mr. Murphy is a very intelligent person. You've had an opportunity to confer with him.

Judge Wall: For five minutes? I was here at two o'clock.

Mr. Sirignano: You have had every opportunity to confer with him before you came here.

Judge Wall: When? I was told about this yesterday and I was in court and busy until one o'clock.

Mr. Sirignano: Mr. Murphy knew that he had to make an appearance here today as of yesterday, and he contacted you.

Judge Wall: That's true, and that's when he called me. I requested an adjournment until today. Now, I request an adjournment (17) to take care of this thing. To go into it.

[fol. 291] Mr. Sirignano: Mr. Wall, I will give you—how much time do you need with your client? We'll recess until you confer with him.

Judge Wall: About twenty-five minutes.

Mr. Sirignano: Very well, go in the library and sit down with your client and advise yourself of the facts in this case, and let's go on with this proceeding.

We will recess for twenty-five minutes.

Judge Wall: I don't think that's fair. In twenty-five minutes we're going to go through that whole thing? You've been investigating for three days. In twenty-five minutes I'm supposed to go through this picture and find out what it's all about. You haven't done it in three days.

Mr. Sirignano: I've talked to many, many witnesses. You've only got one person to talk to. Go ahead, take twenty-five, thirty-five or forty-five minutes. Confer with your client and let's get on with this proceeding. You say you haven't had a (18) chance to amply prepare yourself?

Judge Wall: No.

Mr. Sirignano: Mr. Wall, I asked how long it would take you, and you said it would take twenty-five minutes.

Judge Wall: I'll take it, but I don't think I can do it.

(Short recess held.)

(Interviewed continued at 3:30 and at this time Assistant Counsel Anthony Piazza was present in the room.)

Judge Wall: We have come to the conclusion that there be no further testimony, on the grounds that we [fol. 292] question the jurisdiction, and we say this is purely a labor dispute.

Mr. Sirignano: In other words, Mr. Murphy is going to take the position to any questions that I put to him that he refuses to answer on the grounds that the Commis-

sion has no jurisdiction to ask these questions; is that correct, sir?

Judge Wall: Has no jurisdiction in this matter at all.

(19) Mr. Sirignano: And, therefore, we cannot ask the questions and we should not expect an answer; is that correct, sir?

Judge Wall: Yes.

Q. Mr. Murphy, is that your position?

A. That's right.

Q. You are going to refuse to answer, on the grounds that the Commission does not have the jurisdiction to conduct this investigation; is that correct, sir?

Judge Wall: In this particular labor dispute.

Mr. Sirignano: In the investigation as related to in this record in the interrogation.

Judge Wall: Coupled with the fact that you yourself said that you do not know whether you are in it or out of it.

Q. Is that correct, Mr. Murphy?

A. That's right.

Q. You do not claim to assert your right against self incrimination, is that correct; sir?

Judge Wall: He doesn't take the Fifth (20) Amendment, no.

Q. Is that right?

Mr. Sirignano: I want it from Mr. Murphy.

A. That's right.

[fol. 293] Q. You're not taking the Fifth Amendment, you are not claiming that any of these questions will self incriminate you?

A. No.

Judge Wall: You're not taking the Fifth Amendment?

Mr. Murphy: No.

Q. Mr. Murphy, any future questions that I ask you, you will take that same position?

A. That's right.

Q. Now, for the record, Mr. Murphy, did you have anything to do with causing the strike that is presently pending at the American Export Line?

Judge Wall: He is not answering.

A. I am not answering.

Q. On the same grounds?

(21) A. That's right.

Q. Did you, in any way, participate in this work stoppage to compel the American Export Line to discharge, or to limit the duties of an employee by the name of James Markley?

A. I'm not answering.

Q. On the same grounds?

A. Yes.

Mr. Sirignano: No further questions. (3:37 P.M.)

[fol. 294] Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 295] [File endorsement omitted]

IN THE SUPREME COURT OF NEW JERSEY

No. 3930 September Term

Civil Actions

In the Matter of the Application

of

WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish JOHN MOODY, SR., for failure to obey a Subpoena.

In the Matter of the Application

of

WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

ORDER FOR CERTIFICATION—October 8, 1962

Pursuant to Rule 1:10-1 it is Ordered that the appeal from the judgments entered in this cause on December 4, 1961, in the Superior Court, Law Division, now pending in the Superior Court, Appellate Division (A-263-61 and A-264-61), be certified directly to this Court, to the end that it may be reviewed by this Court; and it is further

Ordered that this cause shall be deemed pending on appeal in this Court, and that further proceedings herein shall be had in the same manner as provided for on appeals as of right, in accordance with the rules of this Court; and it is further

Ordered that all papers necessary to be filed in the cause by the parties hereto in the prosecution of this appeal, down to and including the entry of mandate, shall be filed by the Clerk of this Court without the payment to him of fees for such filing.

Dated October 8, 1962.

By the Court, Joseph Weintraub, Chief Justice.

[fol. 296]

IN THE SUPREME COURT OF NEW JERSEY

A-53. September Term 1962

In the Matter

of

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish JOHN MOODY, SR. for failure to obey a Subpoena.

In the Matter

of

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

Argued January 7, 1963

Mr. Harold Krieger argued the cause for the Defendants-Appellants, John Moody, Sr. and William Murphy. (Messrs. Krieger & Chodash, Attorneys; Mr. Robert Wall, of counsel, and Mr. Harold Krieger on the brief.)

Mr. Robert A. Pin and Mr. Irving Malchman argued the cause for the Waterfront Commission of New York Harbor. (Mr. William P. Sirignano and Mr. Irving Malchman (both of the New York Bar) on the brief.)

OPINION—Decided March 4, 1963

The opinion of the court was delivered by

PROCTOR, J.

This is a consolidated appeal from two judgments of the Superior Court, Law Division, adjudging each of the defendants, John Moody, Sr., and William Murphy, guilty of civil and criminal contempt for failing to testify pursuant to subpoenas issued by the Waterfront Commission of New York Harbor (Commission). The judgments fined the

defendants $50.00 each and sentenced them to 30 days in jail. The judgments further ordered that the subpoenas be obeyed by the giving of responsive answers before the [fol. 297] Commission to the questions set forth therein, and that the defendants be incarcerated until they answer those questions. The judgments also provided for a stay of execution pending appeal, the defendants having previously posted bonds.

We certified the defendants' appeal before argument in the Appellate Division.

This is the second time that the defendants have been adjudged in civil contempt for their refusal to testify pursuant to the aforementioned subpoenas. Briefly, the history of this litigation is as follows: One James H. Markley was an investigator for the Commission, assigned principally to cover the piers of the American Export Lines in Hoboken, New Jersey. On or before May 16, 1960, Markley left the employ of the Commission in order to work for the American Export Lines as a security officer, and obtained a license from the Commission to operate as a port watchman. On Monday, May 16, 1960, the day Markley commenced work for the American Export Lines on its Hoboken piers, the longshoremen employed by American Export Lines on those piers did not report for work. This work stoppage, except for the morning of Tuesday, May 17, continued through Friday, May 20, 1960. The striking employees were members of Hoboken Local No. 2 of the International Longshoremen's Association (ILA). The defendant Moody is an organizer of the ILA in New Jersey, and the defendant Murphy is the business agent of Local No. 2.

Under our Waterfront Commission Act, *N.J.S.A.* 32:23-1 *et seq.* (the New York counterpart is *New York Laws* 1953, c. 882, c. 883), the longshoremen who participated in this work stoppage are required to be and are registered with the Commission. *N.J.S.A.* 32:23-27. Also, under the Act, Markley, as a security officer of American Export Lines, is required to be licensed as a port watchman. *N.J.S.A.* 32:23-39.

[fol. 298] The Commission had information that the work stoppage was "a concerted effort to keep James H. Mark-

ley off the piers of the American Export Lines." Accordingly, the Commission instituted an investigation to determine whether any persons registered with or licensed by the Commission were violating the Waterfront Commission Act by coercing an employer to limit the functions of, or to discharge, a licensed port watchman. In connection with its investigation, the Commission duly served the defendants with subpoenas on May 18, 1960, ordering them to appear and testify at the Commission's offices in New York City. The defendants appeared at the offices of the Commission in response to the subpoenas on May 19,,1960. At the hearing, Moody, after giving his name and address and testifying that he was a union official, refused to answer any further questions. Murphy testified that he was business agent of Local No. 2 and represented members of the local working at the Hoboken piers of the American Export Lines. He said he knew that the longshoremen did not work on May 16, 1960, and that it was common knowledge that for some time before that day things were not normal at the American Export Lines. However, he refused to say whether those conditions were related to the employment of Markley as a port watchman, and he refused to answer any other questions. Both defendants expressly declined to assert their privilege against self-incrimination, although they were specifically asked if that was one of the grounds for their refusal to testify. The primary reason for their refusal to testify was their assertion that the Commission had no statutory authority to investigate the work stoppage because it involved a labor dispute over which the National Labor Relations Board had exclusive jurisdiction.[1]

[fol. 299] Thereafter, the Commission instituted contempt proceedings against the defendants in the Superior Court, Law Division, which resulted in judgments dated June 20, 1960, holding the defendants guilty of civil contempt and ordering that they be fined $50.00 each and that they be incarcerated until they obeyed the Commission's subpoenas.

[1] On defendants' appeal from the first judgment holding them in contempt (*In re Application of Waterfront Comm. of N.Y. Harbor*, 35 N.J. 62 (1961)), defendants' other stated reasons for their refusal to answer were not urged as a ground for reversal.

These judgments were affirmed by this court, and the United States Supreme Court dismissed the defendants' further appeal and also denied *certiorari*. *In re Application of Waterfront Comm. of N.Y. Harbor*, 35 N.J. 62 (1961), *appeal dism'd and cert. den. sub nom. Murphy* v. *Waterfront Commission of New York Harbor*, 368 U.S. 32, 7 L.ed. 2d 91 (1961).

Pursuant to the mandate of this court in the above contempt proceedings, the defendants appeared before the Superior Court, Law Division, on October 3, 1961. The court directed the defendants to appear before the Commission pursuant to the May 1960 subpoenas. Later that day, the defendants appeared at the offices of the Commission as directed. However, except to give their names, addresses and occupations, the defendants again refused to answer any questions, this time upon a number of new objections including the privilege against self-incrimination. All of the objections were overruled by the Commission except the assertion of the privilege against self-incrimination. The hearing was then adjourned and the subpoenas were continued until October 10, 1961, so that the Commission could decide whether to grant the defendants immunity from prosecution pursuant to *N.J.S.A.* 32:23-86(5) of the Waterfront Commission Act, and if so, to afford the Commission an opportunity to give notice to the appropriate officials as required by that subdivision.

On the following day (October 4, 1961) the defendants and the Commission's representative appeared before the [fol. 300] Law Division. The court found that the defendants had obeyed the subpoenas, and that their assertion of the privilege against self-incrimination had been recognized by the Commission as a valid basis for their refusal to answer the Commission's questions. The court held that, since the defendants had complied with the judgments of the court entered June 20, 1960, they had purged themselves of contempt. However, the court also directed that the defendants should continue to be subject to the subpoenas, and that the defendants appear before the Commission on the adjourned return date (October 10, 1961).

The return date of the subpoenas was further adjourned with the consent of the parties until October 27, 1961, at

which time the defendants appeared at the offices of the Commission. At the outset of this meeting, Myles J. Ambrose, Executive Director of the Commission announced, "The purpose of the meeting is to inquire into violations of the Compact in connection with a work stoppage in May, 1960, at the American Export Line piers in Hoboken, New Jersey."

The following documents were made part of the record: (1) letters (pursuant to *N.J.S.A.* 32:23-9) from the Commissioners designating Ambrose and William P. Sirignano, the Commission's General Counsel, to act in the places of Commissioners Harold R. Tyler, Jr., and David C. Thompson in the investigation wherein Murphy and Moody were subpoenaed, and to confer immunity upon them pursuant to *N.J.S.A.* 32:23-86(5); (2) copies of letters sent pursuant to *N.J.S.A.* 32:23-86(5) to the Attorneys-General of New York and New Jersey, to the District Attorney of New York County and to the Prosecutor of Hudson County, together with certificates of mailing, notifying them of the Commission's intention to confer immunity upon Murphy and Moody; and (3) letters of reply received from all of the above-named officials except the Prosecutor of Hudson [fol. 301] County stating that each had no objection to the Commission's proposed grant of immunity to the defendants. No reply was received from the Prosecutor of Hudson County.

Counsel for the defendants objected to the legality of the proceedings on the ground that the Commissioners could not delegate the power to grant immunity to their designees, Ambrose and Sirignano. They also challenged the adequacy of the letters of notice sent to the officials of the two States. They further demanded a statement apprising them of the purpose and pertinency of the interrogation, contending that the Commission's failure to give them such a statement deprived them of due process of law. All these objections and demands were rejected.

Thereafter, the defendants each took the stand and, after stating his name and address, each refused to answer any further questions on the ground that his answers might tend to incriminate him. Thereupon the Commissioners' designees granted immunity to each of the defendants pursuant to *N.J.S.A.* 32:23-86(5) against prosecution in the

States of New York and New Jersey concerning any transaction to which they would testify, and directed the defendants to answer each of the questions. All of the questions pertained to the defendants' knowledge or actions in connection with the May 1960 work stoppage. The defendants again refused to answer for all of the reasons stated above, and particularly because the grant of immunity did not protect them against federal prosecution.

The Commissioners' designees expressly recognized that the grant of immunity did not extend to federal prosecution, but nevertheless directed the defendants to answer, saying that there was no requirement that the immunity extend that far. Upon the defendants' further refusal to answer, the Commissioners' designees directed the attorney for the [fol. 302] Commission to institute contempt proceedings against the defendants.

The Commission initiated the present proceedings by moving before the Law Division that the defendants "be punished as for a civil and criminal contempt of court." Annexed to the moving papers were numerous exhibits depicting the prior history of the matter and including transcripts of the proceedings before the Commission on October 3, 1961, and October 27, 1961. In response to the Commission's motions, the court issued orders on November 1, 1961, directing the defendants to show cause why they should not be punished as for a contempt of court. The defendants filed an answer to the Commission's motions in which they denied all the allegations, and raised the following separate defenses: (1) failure of the Commission to grant immunity against federal incrimination; (2) improper delegation by the Commission of the power to confer immunity; (3) insufficient notice to the officials of the respective States; (4) failure to explicitly confer immunity as to each question asked; (5) preemption of the subject matter of the investigation by the Federal Labor Management Relations Act; and (6) inadequate apprisal of purpose and pertinency, resulting in a denial of due process of law. The defendants also moved for a bill of particulars or, in the alternative, an order requiring answers to interrogatories. These discovery motions sought to compel the Commission, in effect, to produce for the

defendants' inspection its entire investigative files relating to the work stoppage investigation, including intra-office communications as well as communications between the Commission and any state or federal officials. Defendants also demanded a jury trial and, lastly, moved to quash the subpoenas as having been exhausted when the defendants were purged of their prior contempt.

[fol. 302a] The matter was heard before the Law Division on November 21 and 22, 1961. The court heard extensive argument from both sides on the above motions and defenses. However, the trial judge announced that he was "not going to receive any testimony," and said he was "going to decide it [the case] on the record as I've got it." Later the court reconsidered its ruling and concluded that it would receive the testimony of the defendants for the limited purpose of pinpointing their fear of possible federal incrimination. Murphy's testimony concerning the basis for his fear of federal incrimination was as follows:

> "Q. What crimes could you possibly have been connected with as to result in a Federal charge against you or others, in combination with others, in conspiracy with others? A. That the American Export Lines is subsidized by the United States Government and could be sued, the union could be sued, and I could be sued, personally. Interstate commerce freight that was held up during the strike would bring in the Federal Bureau of Investigation, and the rights of watchmen working on the piers that could be in cahoots in pilferages, and stuff like that.
>
> Q. Also, were you aware of the fact it was the contention of the Waterfront Commission that you tried, and others together, in combination and conspiracy, to keep an individual from employment on the piers, namely, Mr. Markley? A. That's right.
>
> Q. And was that a reason for your exercising that privilege, yourself? A. That's right."

Moody's testimony concerning the basis for his fear of federal incrimination was as follows:

"Q. And you exercised your privilege as you have just testified out of fear of incrimination of any Federal laws? A. That's right.

Q. Will you tell the Court what you feared and pinpoint them and the respect? A. First, from the Waterfront Commission, they have, what they say, the right and authority to question. Now, there's, we say, pilferage, that they say, work stoppage, we had to do with the pilferage and we had to do with the work stoppage; and the watchmen being not in the ILA, outside the ILA, that we tried to tell the watchmen what to do and [fol. 303] what not to do, and to stop this one gentleman from getting hired on the pier. We don't do that, your Honor.

• • • • • • •

Q. You have just testified that the American Export Lines are engaged in interstate commerce, is that correct? A. That's right.

Q. And that this stoppage, as contended by the Waterfront Commission was an illegal stoppage, was an interference with interstate commerce? A. That's right.

Q. And is that why you fear incrimination? A. That's right.

Q. And that it could lead to other evidence and tend to lead to other evidence that could possibly incriminate you? A. That's right."

The Law Division held that the Commissioners' designees had power to confer immunity on the defendants; that the Commission's letters to the officials of New York and New Jersey constituted adequate notice under the statute of its intention to confer immunity upon the defendants; that the defendants were adequately apprised of the subject matter of the investigation; and that the Commission was not required to grant the defendants immunity from federal prosecution. The court also expressed its doubt of the sincerity of the defendants' fear of federal criminal involvement. The court found the defendants guilty of both civil and criminal contempt. The court then disposed

of the various motions of the defendants, *i.e.*, the motion to quash the subpoenas, the motions for discovery, and the motion for jury trial, saying:

> "Those motions were motions directed to the discretion of the Court. However, the disposition of the matter on its merits finally disposed of them, but even in the exercise of discretion, none of those motions would be granted by this Court. So all the other motions are respectfully denied."

The court deferred imposition of sentence in order to secure a presentence report from the probation department.

[fol. 304] At the time of sentencing, the defendants' counsel urged that the court on October 4, 1961 had purged the defendants of their original contempt, and that thereafter in the proceedings before the Commission the defendants merely asserted their rights upon novel questions of law. The court noted that the defendants had refused to answer the questions in issue upon three different occasions, to wit, May 19, 1960, October 3, and October 27, 1961. Though the court believed that the defendants had a "perfect right to interpose whatever legal objections were at their command," nonetheless the court was "constrained to believe that there has to be and there now is, at least for the present, an end to these witnesses being asked these questions." The court directed the Commission to prepare an order which would set out verbatim the questions that the defendants had refused to answer and which would order the defendants to stand committed until they responsively answered the questions; and the court further fined the defendants each $50.00 and sentenced them to jail for 30 days. The court also stated that the defendants, upon answering the questions, could apply to the court for an order purging them of contempt.

On this appeal, the defendants first point out that under the *Evidence Act, 1960* (*N.J.S.A.* 2A:84A-1 *et seq.*), the privilege against self-incrimination expressly extends to federal incrimination. They argue that since the Waterfront Commission declared that its grant of immunity to

the defendants did not and could not extend to federal prosecutions, the Commission's orders to answer were in violation of the aforesaid Act.

The Commission argues that the defendants waived the privilege against self-incrimination by expressly declining to assert it at the first hearing before the Commission on [fol. 305] May 19, 1960. The Commission further argues that since the defendants contended in the first contempt proceeding that the Commission's investigation constituted an unlawful interference with innocent conduct, *i.e.*, a labor dispute over which the National Labor Relations Board has exclusive jurisdiction, they are estopped from taking the inconsistent position in the present contempt proceeding that their testimony might implicate them in illegal conduct under federal law.

Though we think the defendants should have raised all their reasons for their refusal to answer, including the privilege against self-incrimination, at the hearing before the Commission on May 19, 1960, or at least in the contempt proceedings in the Superior Court which resulted in the judgments of June 20, 1960 holding them in contempt, we think that in the circumstances of this case the defendants should not be precluded from raising the issue of the privilege against self-incrimination. The Commission recognized the defendants' right to assert the privilege at its hearing of October 3, 1961, and the trial court on October 4, 1961 also recognized their right when it purged them of their original contempt. Moreover, at its hearing on October 27, 1961, the Commission clearly recognized the defendants' right to assert the privilege when it granted them immunity against prosecution. Finally, the contentions of waiver and estoppel were never raised by the Commission in the court below and therefore it may not raise them for the first time in this court.

We return to the defendants' argument regarding the validity of the Commission's grant of immunity. The Waterfront Commission Act is an interstate compact, enacted by the States of New York and New Jersey in 1953 with the consent of Congress, 67 Stat. 541, Act of Aug. 12, 1953, c. 407, in order to eliminate evil conditions on the waterfront in the Port of New York Harbor. The Compact

[fol. 306] creates the Waterfront Commission as an agency of both States, with authority to license or register workers, and for good cause to refuse licenses and registrations, and to regulate labor and hiring practices on the waterfront. In order to further the elimination of waterfront evils, the Commission is empowered to investigate waterfront practices and other matters bearing on the objectives of the Compact, and to make recommendations to two States for the improvement of waterfront conditions and for the effectuation of the purposes of the Compact. The members of the Commission and its properly designated officers may administer oaths and issue subpoenas throughout both States to compel the attendance of witnesses, the giving of testimony, and the production of other evidence. *N.J.S.A.* 32:23-10. "Witness" is defined in the Compact as "any person whose testimony is desired in any investigation, interview or other proceeding conducted by the commission pursuant to the provisions of this act." *N.J.S.A.* 32:23-85. Failure to obey a subpoena of the Commission is made punishable by the Superior Court in New Jersey and the Supreme Court in New York "in the same manner as said failure is punishable by such court in a case therein pending." *N.J.S.A.* 32:23-62. See also, *R.R.* 4:46-5(c). For a history of this bi-state legislation see *Hazelton* v. *Murray*, 21 N.J. 115 (1956); *In re Application of Waterfront Com.*, 32 N.J. 323 (1960).

Under *N.J.S.A.* 32:23-86(5) of the Waterfront Commission Act, the Commission has explicit statutory power to grant immunity from prosecution in order to obtain the testimony of a witness who refuses to testify upon the ground of self-incrimination. That subdivision grants the Commission the power:

> "(5) To confer immunity, in the following manner: In any investigation, interview or other proceeding conducted under oath by the commission or any duly au- [fol. 307] thorized officer, employee or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and, notwithstanding such refusal, an order is made upon 24 hours' prior written notice to the appropriate Attorney-General of the State of New York or the State of New Jersey, and to

the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section 3 of article III of this act, that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this subdivision, he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

"'Immunity' as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section 3 of article III of this act, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order, and any such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

"Immunity shall not be conferred upon any person except in accordance with the provisions of this subdivision. If, after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate Attorney-General or district attorney or prosecutor having an official interest therein was not notified, such failure or neglect shall not deprive such person of any immunity otherwise properly conferred upon him."

Section 3 of Article III, referred to in the above-quoted subdivision, reads in pertinent part as follows:

> [fol. 308] "The commission shall act only by unanimous vote of both members thereof. Any member may, by written instrument filed in the office of the commission, designate any officer or employee of the commission to act in his place as a member whenever he shall be unable to attend a meeting of the commission." *N.J.S.A.* 32:23-9.

The immunity subdivision quoted above was enacted in 1956 in New Jersey (L. 1956, c. 194) and in 1957 in New York (*New York Laws* 1957, c. 188) as an agreement between the two States supplementary to the Waterfront Commission Compact and amendatory thereof. This legislation was enacted pursuant to the provisions of Article XVI, Section 1 of the Compact empowering the Legislature of either State, when concurred in by the Legislature of the other, to enact amendments and supplements to the Compact. *N.J.S.A.* 32:23-70. Thus, the immunity subdivision is in effect a part of the original Waterfront Commission Compact, to which Congress gave its consent.

N.J.S.A. 32:23-86(5), the immunity subdivision, is substantially the same as, and in fact was patterned after, § 2447 of the New York Penal Law. In the statement appended to S-385, which became Chapter 194 of the Laws of 1956, the purpose of the then-proposed subdivision was declared as follows:

> "[It] [a]uthorizes the 2 commissioners, acting unanimously, to grant immunity from criminal prosecution in connection with any commission investigation or proceeding, but only after notifying the appropriate prosecutor and Attorney-General and giving them an opportunity to point out why, in the particular case, the granting of immunity would not be in the public interest. Heretofore, a number of important investigations conducted by the commission in an effort to identify the real principals in kickback and other rackets

on the waterfront have been thwarted by a valid claim of privilege against self-incrimination made by underlings. The commission could unseal such lips by granting immunity and compelling testimony from such underlings in cases where the public interest would thereby be served.

* * * * * * *

[fol. 309] "The language of the section is practically identical with the provisions for granting immunity as codified through the efforts of the New York State Crime Commission and set forth in Section 2447 of the Penal Law of New York."

The United States Supreme Court has held that § 2447 of the New York Penal Law is valid notwithstanding a contention that it is unconstitutional to require a witness to testify upon the grant of immunity thereunder, where such witness' testimony might be used in a federal prosecution against him. *Knapp* v. *Schweitzer*, 357 U.S. 371, 2 L.ed.2d 1393 (1958). In that case Mr. Justice Frankfurter, speaking for the Court, said:

"In these days of the extensive sweep of such federal statutes as the income tax law and the criminal sanctions for their evasions, investigation under state law to discover corruption and misconduct, generally, in violation of state law could easily be thwarted if a State were deprived of its power to expose such wrongdoing with a view to remedial legislation or prosecution." *Id.*, 357 U.S. at 378-379, 2 L.ed.2d at 1400.

In *Dunham* v. *Ottinger*, 243 N.Y. 423, 438, 154 N.E. 298, 302 (1926), the New York Court of Appeals, in answer to a contention that an immunity statute of that State was insufficient because it did not preclude the use of the testimony in federal criminal proceedings, said:

"It [the statute] does give ample protection against the use of such testimony in our own tribunals, and it is perfectly well established that this is a sufficient immunity; that all that the state is required to or can do

> is to give immunity against its own processes, and, if it has done that, as this statute does it, it has satisfied the requirements of the Constitution."

The above rule has been stated by the United States Supreme Court in *United States* v. *Murdock*, 284 U.S. 141, 149, 76 L.ed. 210, 213 (1931):

> "[T]he lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full [fol. 310] and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination."

This rule has been recognized or followed in nearly all of the states in the nation, including New Jersey where the privilege against self-incrimination rests solely on a statutory and common law foundation. See *In re Pillo*, 11 N.J. 8, 16 (1952), and authorities cited therein. It is clear that prior to the enactment of the *Evidence Act, 1960* (*N.J.S.A.* 2A:84A-1 *et seq.*), the Waterfront Commission was empowered by virtue of the immunity subdivision to compel a witness, upon whom immunity had been conferred, to testify notwithstanding a claim by the witness of a fear of federal prosecution. See *In re Pillo, supra; Nusbaum* v. *Newark Morning Ledger Co.*, 33 N.J. 419, 424 (1960).

The defendants contend, however, that the above statement of law has been changed by virtue of the enactment of Rule 24 (*N.J.S.A.* 2A:84A-18) of the *Evidence Act, 1960* which expressly extends the privilege to matters which might tend to incriminate a witness under the laws of "this State, or another State or the United States," unless "it clearly appears that the witness has no reasonable cause to apprehend a criminal prosecution."[2] See *Nusbaum* v. *New-*

[2] It must be noted that the privilege against self-incrimination accorded to a witness by the laws of New York extends only to crimes against that State, so that a grant of state-wide immunity is sufficient to compel testimony notwithstanding a claim of federal incrimination. *Waterfront Commission* v. *Marchitto*, 217 N.Y.

ark Morning Ledger Co., supra, at 424. They further point out that Rule 2(1) (*N.J.S.A.* 2A:84A-16(1)) provides:

> "(1) The provisions of article II, Privileges [which include Rule 24], shall apply in all cases and to all proceedings, places and inquiries, whether formal, informal, public or private, as well as to all branches of government and by whomsoever the same may be conducted, and none of said provisions shall be subject to being relaxed."

[fol. 311] The above rules obviously express a broad and liberal policy of our State to extend the scope of the privileges accorded to witnesses in this jurisdiction. However, the Legislature has recognized that the immediate implementation of such a policy might cause unforeseen conflicts with prior existing legislation, which would lead to undesirable consequences. Therefore, it has wisely chosen to proceed cautiously in a step-by-step manner, examining each piece of existing legislation which might be affected by a change in the scope of privileges, and allowing itself an opportunity to provide a specific legislative cure for any conflicts which might arise. Those existing statutes which the Legislature had already examined and wished to repeal were expressly mentioned in the *Evidence Act* as being thereby repealed. *N.J.S.A.* 2A:84A-45. The Legislature also provided that this court may adopt rules of evidence, *N.J.S.A.* 2A:84A-33, but it further provided that any such rules shall not supersede any law in conflict or inconsistent therewith unless the conflicting or inconsistent law "shall be expressly identified by footnote to any rule so adopted." *N.J.S.A.* 2A:84A-40. Furthermore, in order to make clear

---

Supp. 2d 487 (A.D. 1st Dept. 1961), leave to appeal denied, 10 N.Y. 2d 813, 178 N.E. 2d 231 (1961), cert. den. 368 U.S 954, 7 L. ed. 2d 386 (1962); *Commission of Investigation* v. *Lombardozzi,* 180 N.Y. Supp. 2d 496 (A.D. 1st Dept. 1958), aff'd, 15 N.Y. 2d 1026, 158 N.E. 2d 250 (1959), 6 N.Y. 2d 878, 160 N.E. 2d 125 (1959), cert. den. sub nom. *Miranda et al.* v. *Commission of Investigation of the State of New York,* 360 U.S. 930, 3 L. ed. 2d 1543 (1959), appeal dismissed sub nom. *Mancuso* v. *Commission of Investigation of the State of New York,* 361 U.S. 10, 4 L. ed. 2d 50; see *Knapp* v. *Schweitzer, supra.*

its intention to avoid any unforeseen impairment of some existing statute, the Legislature expressly provided in Rule 2(4) (*N.J.S.A.* 2A:84A-16(4)):

> "(4) The enactment of the rules set forth in this act or the adoption of rules pursuant hereto shall not operate to repeal any statute by implication."

In the *Report of the* [*Legislative*] *Commission to Study the* [fol. 312] *Improvement of the Law of Evidence* (1956), which is an authoritative guide to the interpretation of the *Evidence Act, 1960,* it was stated at p. 15 that Rule 2(4) (quoted above):

> ". . . has the effect of continuing all existing statutes. This Commission feels that it is necessary to review the New Jersey statutes in detail and to specifically treat each such statute dealing with evidence. Otherwise, a wholesale repeal of many statutes, without consideration of all the implications, would result."

In view of the above, it is clear to us that although the Legislature employed a broad brush in liberally extending the scope of the rules regarding privileges, it did not intend that, without further study and action, those rules should be applied as broadly as their language would otherwise permit or require. The question before us, therefore, is whether the expansion of the privilege against self-incrimination to include incrimination under federal law was intended by the Legislature to immediately impair the powers of the Waterfront Commission to investigate evil waterfront practices and to compel testimony after a grant of immunity from state-wide prosecution in New York and New Jersey. We think the Legislature had no such intention in mind when it passed the *Evidence Act, 1960.*

It is clear that in the formation of the Compact our Legislature, together with the Legislature of New York, intended to deal with joint problems existing throughout a single port area situated partly in New York and partly in New Jersey, and not with separate problems in separate ports of each State. From the standpoint of geography, commerce, and waterfront working conditions, New York Har-

bor is an organic whole, although politically, the harbor is split between the law-making authority of the two States. Plainly, these joint problems could not be adequately dealt with except through the coordinated efforts of the two States and the United States. The situation called for uni- [fol. 313] fied action. As a consequence, the Waterfront Commission, a single bi-state agency, was established with the consent of Congress to administer a joint legislative program throughout the Port of New York District, embracing the New York-New Jersey waterfront. Both States ceded certain governmental powers to this autonomous bi-state agency. These powers, as mentioned earlier in this opinion, include the power to make appropriate investigations, subpoena witnesses, and compel testimony after a grant of immunity against prosecution in both States. See *Application of Waterfront Comm. of N.Y. Harbor*, 30 N.J.Super. 33 (Law Div. 1956). The objectives of the Compact were to provide for uniform treatment of a unique, bi-state problem. Such uniformity, in order to be effective, must be maintained throughout the life of the Compact. See Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 *Yale L. J.* 685, 698 (1925). In short, the Waterfront Commission, when acting within the orbit of the governmental responsibility which the States have expressly or by fair implication agreed to vest in it, was intended to be free from any unilateral restraint by either State which might thwart the Commission in its efforts to eliminate evil conditions in an area where there is extensive activity in international and interstate commerce. *Cf. State* v. *Murphy*, 36 N.J. 172, 186-187 (1961). Indeed, it is doubtful whether a single legislature could unilaterally impair the powers of the Waterfront Commission, even if it so desired. See *Green* v. *Biddle*, 8 Wheat. 1, 5 L.ed. 547 (1823); *President, Managers, &c.* v. *Trenton City Bridge Co.*, 13 N.J.Eq. 46 (Ch. 1860); see also, *Comment*, 45 *Yale L. J.* 324, 329 (1935).

If, as defendants contend, a witness may claim the privilege against self-incrimination with respect to federal crimes notwithstanding a conferral of bi-state immunity by [fol. 314] the Commission, it would follow that there could be no effective investigation not only of the state aspects of

such crimes but even of the non-criminal aspects of waterfront conditions since possible federal criminal overtones are frequently present. This is so because of the nature of waterfront activity and its constant involvement with interstate commerce and other such areas of federal jurisdiction. Since the Commission cannot grant immunity as to the federal crimes it will remain helpless. The difficulty is not merely fanciful; it might well result that investigations by the Commission would be seriously hampered and, in many cases, frustrated.

Moreover, an interpretation of the Compact which is not uniform in both States would lead to results disruptive of the investigative process of the Commission. It might mean that different witnesses would have different rights depending on which side of the Hudson River they lived, or on which side the events in question took place. It might also mean that the same witnesses would have different rights depending on which side of the River they appear for examination or are prosecuted for contempt.[3] Certainly, our Legislature in adopting the *Evidence Act, 1960* never intended such results.

For the above reasons, we hold that Rule 24 of the *Evidence Act, 1960* does not entitle the defendants to refuse to testify after the Commission has conferred immunity upon them.[4]

---

[3] See *Waterfront Commission* v. *Marchitto, supra*, where the defendant, a New Jersey resident, was successfully prosecuted in the New York courts for contempt arising out of his refusal to answer questions pertaining to his activities in New Jersey, propounded at a Commission hearing in New York City.

[4] Of course, it is not for us to say whether the Commission's grant of immunity would be honored in a federal criminal proceeding. In *Feldman* v. *United States*, 322 U.S. 487, 88 L. ed. 1408 (1943), *rehearing denied*, 323 U.S. 811, 89 L. ed. 646 (1944), it was held by a 4 to 3 vote that testimony of a defendant previously compelled under the sanctions of a state immunity statute could be used against him in a federal prosecution. If *Feldman* were overruled, and state-compelled testimony held inadmissible in the federal courts, a witness would be free to testify under a state immunity grant without running the risk of a subsequent federal prosecution based upon such compelled testimony. In Kroner, *Self Incrimination: The External Reach of the Privilege*, 60 Colum.

[fol. 315] In view of the above conclusion, it is unnecessary for us to pass upon the Commission's contention that the defendants failed to establish in the Superior Court a reasonable basis for their asserted fear of federal incrimination.

The defendants further contend that having purged themselves of contempt under the subpoenas returnable before the Commission at its first hearing in May 1960, those subpoenas were exhausted and could not be made the basis for the proceedings before the Commission on October 27, 1961. The subpoenas had been made returnable on May 18, 1960 "and at any adjourned date thereof." As mentioned earlier in this opinion, the defendants appeared before the Commission on October 3, 1961 and refused to testify upon the ground of self-incrimination. The Commission recognized the defendants' invocation of the privilege and adjourned the subpoenas until October 10, 1961, so that the Commission could decide whether to confer immunity from prosecution upon the defendants. The following day, October 4, 1961, the parties appeared before the Superior Court, which ruled that the defendants had purged themselves of their previous contempt. However, the court further ruled that the subpoenas were still in effect and noted that the Commission had adjourned the subpoenas until October 10, 1961. Counsel for the defendants agreed that they would appear at the appointed time, and the court entered an order to that effect. The hearing of October 10, 1961, was adjourned until October 27, 1961, with the [fol. 316] consent of all the parties, at which time the defendants appeared. Since the court ordered the defendants to appear and they consented to such order, and did appear before the Commission on October 27, 1961, their conten-

---

L. Rev. 816, 837, n. 155 (1960), the author observes: "That this [overruling *Feldman*] is not unlikely is suggested by the fact that 4 Justices now on the Court appear to favor such a result. Justices Black and Douglas were among the dissenters in *Feldman*. See 322 U.S. at 494. Mr. Chief Justice Warren, in dissent and Mr. Justice Brennan, in a concurring opinion, indicated in *Knapp* v. *Schweitzer* that the time was ripe for review of the *Feldman* rule. See 357 U.S. at 381."

tion that the power of the subpoenas to compel their appearance had been exhausted is clearly without merit.

The defendants also contend that the Commission's grant of immunity was invalid because: (1) the letters sent by the Commission to the officials of New York and New Jersey advising them of the Commission's intention to confer immunity upon the defendants were not sufficiently informative "to enable those officers to arrive at any rational judgment as to whether the case is an appropriate one for concurrence by such law officers in the Commission's proposed granting of immunity"; (2) not all such law officers having an official interest in the subject matter were notified; (3) the Commissioners' appointment of designees to confer immunity upon the defendants was an improper delegation of power;[5] and (4) the Commission did not make the grant of immunity explicit as to each question asked.

N.J.S.A. 32:23-86(5) provides that the grant of immunity by the Commission shall be "upon 24 hours' prior written notice to the appropriate Attorney-General of the State of New York or the State of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein." Pursuant to this provision, the Commission mailed letters to the Attorneys-General of New York and New Jersey, the District Attorney of New York [fol. 317] County, and the Prosecutor of Hudson County. These letters set forth the Commission's intention to confer immunity upon the defendants in an investigation "into a strike that took place at the American Export Line Terminal in Hoboken, New Jersey on May 16 through May 20, 1960." The letters further recited the history of the proceedings, including the fact that the defendants refused to answer questions concerning their participation in the strike on the grounds that their answers might tend to

---

[5] The defendants hint that the Legislature could not constitutionally delegate to the Commissioners themselves the power to grant immunity. However, they do not press this point and in any event, we would not consider it since the Attorney-General was not notified that the constitutionality of a statute was under attack. R.R. 4:37-2; *Bergen County Sewer Authority* v. *Little Ferry*, 5 N.J. 548, 554 (1950).

incriminate them. Although there is nothing in the immunity subdivision requiring receipt of replies to the letters of notice, letters were received from both Attorneys-General and from the District Attorney of New York County, informing the Commission that these officials had no objections to the proposed grant of immunity to the defendants. (No reply was received from the Hudson County Prosecutor.)

Although, as said above, the defendants contend that the Commission's letters of notice were not sufficiently informative, they do not suggest what further facts would be necessary in the circumstances. Since the letters clearly informed the officials as to the specific nature of the inquiry, and gave them an opportunity to be heard if they saw fit in order that they might persuade the Commission to withhold the granting of immunity, we think the letters were amply sufficient to comply with the statute. In any event, the immunity granted under the subdivision protects the defendants even if the law officials were not properly notified. The requirement of giving notice to the officials is not a *sine qua non* to the grant of immunity. We agree with what was said in *Commission of Investigation* v. *Lombardozzi, supra,* 180 N.Y.S.2d at 503, where the court was construing an immunity statute substantially identical to the one *sub judice*:

> [fol. 318] "When requested in these proceedings, the Commission informed each appellant that it had afforded the Attorney-General and the appropriate district attorney an opportunity to be heard in compliance with section 7 but refused to specify the details thereof. We find no error in that decision. The grant of immunity was absolute. It appears to have been the legislative intent that before such extensive power was exercised by the Commission, as a matter of governmental comity, it should give certain public prosecutors an opportunity to be heard to enable them to induce the Commission to withhold the granting of such immunity for reasons advanced, which might have been unknown or overlooked by the Commission. But the opportunity to be heard was not a

restriction on the power. If objections were made by prosecutors and not needed by respondent, the witness would not be the less protected. Assuming the Commission acted improvidently in the face of objections it might be subject to correction in an official forum or otherwise. Such eventual correction, regardless of what effect it might have on the Commission, individually, or as a body, could not detract from the immunity already granted. Thus, in stating that the Attorney-General and appropriate District Attorney had been afforded an opportunity to be heard, the respondent sufficiently complied with the statute. It was not for appellants to go further into the matter. When the immunity is granted it is not at the peril of the witness but at the peril of the Commission if it fails to comply with the requirements of the statute."

We find no merit in the defendants' contention that not all of the law officials "having an official interest" in the proposed grant of immunity were notified in compliance with the immunity subdivision. The defendants do not suggest which other law officials should have been notified by the Commission. Moreover, what has been said in the preceding paragraph adequately answers this contention.

We further find no basis for the defendants' attack upon the validity of the appointment of the designees by the Commissioners to act in their places for the purpose of conferring immunity. *N.J.S.A.* 32:23-86(5) provides that immunity may be conferred by the Commissioners "or their designees appointed pursuant to the provisions of section 3 of article III of this act." In turn, this latter sec- [fol. 319] tion (*N.J.S.A.* 32:23-9) provides that though the Commissioners can act only by unanimous vote of both members, "Any member may, by written instrument filed in the office of the commission, designate any officer or employee of the commission to act in his place as a member whenever he shall be unable to attend a meeting of the commission." Pursuant to these provisions, Commissioners Thompson and Tyler designated William P. Sirignano and Myles J. Ambrose, respectively, to act in their places as members of the Commission in the present investigation on

any occasion when the Commissioners were unable to attend, and to confer immunity upon the defendants. The defendants point out that the Commissioners' instruments of designation were executed on October 13, 1961, were unlimited as to time, and were actually put to use by the designees on October 27, 1961. They argue that a Commissioner as "a gubernatorially-appointed official [should not] be permitted to strip himself of what is probably his most solemn statutory function in this indiscriminate manner."

The short answer to this contention is that here there has been no such stripping of power by the Commissioners; the designation is clearly limited to a specific investigation, for a specific purpose, and may be exercised only on those occasions which the Commissioners themselves are unable to attend. There is nothing in the record to suggest that the Commissioners were free to attend the hearing on October 27, 1961.

We find no substance to the defendants' final challenge to the validity of the Commission's grant of immunity, *i.e.*, that the grant was not explicit as to each question on which the defendants' claims of privilege were overruled. The immunity subdivision provides: "In any investigation, . . . if a person refuses to answer a question . . . on the ground that he may be incriminated thereby, [fol. 320] and, notwithstanding such refusal, an order is made . . . [after due notice to appropriate officials and by the unanimous vote of both commissioners or their designees] that such person answer the question . . . , such person shall comply with the order. If such person complies with the order, and if, but for this subdivision, he would have been privileged to withhold the answers given . . . , then immunity shall be conferred upon him. . . ." It is clear from the above that the immunity is conferred by operation of the statute, and not by some ritualistic statement of the examining officer. In the proceedings before the Commission on October 27, 1961, the provisions of the immunity subdivision were read and explained to the defendants and their counsel. Each time a defendant refused to answer a question on the ground of self-incrimination, the Commissioners' designees unanimously ordered the defendant to

answer that question notwithstanding his claim of the privilege. This procedure complied with the statute and was therefore sufficient to cloak the defendants with the statutory immunity.

The defendants next contend that they were denied due process of law by the Commission's refusal to adequately apprise them as to the "purpose and pertinency" of the investigation. The Supreme Court of the United States has made clear that a witness before an investigative body is entitled to be adequately apprised of the subject matter of the investigation, and of the manner in which the questions asked are pertinent thereto, in order that he may determine whether he would be within his rights in refusing to answer. *Scull* v. *Commonwealth of Virginia*, 359 U.S. 344, 3 L.ed.2d 865 (1959); *Watkins* v. *United States*, 354 U.S. 178, 1 L.ed.2d 1273 (1957); see *In re Application of Waterfront Com.*, 32 N.J. 323, 336-338 (1960).

[fol. 321] The defendants acknowledge that when they appeared before the Commission on October 3, 1961 and thereafter, they stood apprised that the purpose of the Commission's May 1960 investigation was to inquire into the work stoppage of May 16-20, 1960 on the American Export Lines' piers in Hoboken, in order to determine whether the work stoppage constituted a threat to the port-watchman security system by preventing Markley from functioning on the piers, and whether any violations of the Compact were involved. However, the defendants contend that their right to an adequate apprisal extends beyond the above recital of purpose. They urge that they are entitled to be "apprised" of any damaging information which the Commission might have against them, and to be confronted with any accusatory witnesses, in order that they might have "an opportunity to make a rational judgment of the necessity and advisability of invoking the self-incrimination privilege"; that they should not be placed "in the position of having to decide in the dark whether or not they should incur the grievous legal and social disadvantage of invoking the privilege of self-incrimination." The defendants cite no authority for this proposition, conceding it is "*de novo* in any jurisdiction." We think this point is wholly without substance. The defendants' argument assumes that the

questions propounded called for an answer which might tend to incriminate them, and as to which, therefore, they might properly assert their privilege. Their contention, in effect, is that some incriminating questions might safely be answered if they knew beforehand that the Commission did not have enough other damaging information to make a future prosecution likely. In other words, they do not wish to be put in the position where they must make the distasteful choice of invoking the privilege unless they are certain it is necessary in order to protect themselves from a future prosecution.

[fol. 322] We know of no rule, constitutional or otherwise, which provides that when, as here, the subject matter of the inquiry and the pertinency thereto of questions have been made clear to a witness, he is entitled to be given further information before deciding whether to exercise his privilege against self-incrimination. If the Commission were thus compelled to disclose the contents of its files, then the whole investigative process would be subject to scrutiny before the investigation had even gotten under way, and in most cases the investigation would be thwarted. See *In re Application of Waterfront Com., supra,* 32 N.J. at 334. Investigations to determine whether there are evil conditions on the waterfront are too important to be shackled by recalcitrant witnesses, whose privileges against self-incrimination are amply protected, merely because of some asserted disadvantage which would seem at best to be of a nebulous nature. Due process of law does not require that the niceties of personal feelings be allowed to obstruct the search for truth. *Cf. In re Vince,* 2 N.J. 443, 457 (1949).

In connection with the defendants' contentions with regard to the Commissioners' appointment of designees, the adequacy of notice to the law officials of both States, and their demand for apprisal as to any damaging information or accusatory witnesses, the defendants moved before the trial court for discovery in the form of interrogatories and a bill of particulars. In view of our above disposition of these contentions, however, it follows that the defendants were not entitled to any further information regarding

them. The defendants' discovery motions also sought information with regard to whether the Commission's present investigation was within its statutory jurisdiction. The defendants are foreclosed from raising that issue in these proceedings, however, since it was the sole subject of the defendants' first appeal to this court, wherein we held that [fol. 323] the Commission had jurisdiction to conduct the present investigation. *In re Application of Waterfront Comm. of N.Y. Harbor*, 35 N.J. 62 (1961). Therefore, the trial court was correct in denying the defendants' motions for discovery.

Nor was there error in the trial court's denial of the defendants' demand for a jury trial. Both *R.R.* 3:8-3, having to do with criminal contempts, and *R.R.* 4:87-3, having to do with contempts generally, upon which the defendants relied in their demand, specifically provide that "[t]he court in its discretion may try the issue without a jury." See *Green* v. *United States*, 356 U.S. 165, 2 L.ed.2d 672 (1958). We find that the trial court did not abuse its discretion in hearing the matter without a jury.

The defendants also contend that the commingling of the criminal and the civil contempt proceedings before the trial court was error, and that such error was compounded by the restrictive nature of the trial. We are satisfied that the defendants had a fair trial with regard to the issue of civil contempt, i.e., whether they should be incarcerated until they have answered the questions propounded by the Commission. The defendants do not dispute the facts that were presented to the trial court, and their contentions as to the legality of the proceedings before the Commission have already been disposed of in the course of this opinion. We therefore conclude that the trial court properly found the defendants guilty of civil contempt.

However, we think that the judgments holding the defendants guilty of criminal contempt must be reversed. In *N.J. Dept. of Health* v. *Roselle*, 34 N.J. 331, 344 (1961), we expressed grave doubts whether a defendant's rights could be adequately protected in a "double-barrelled proceeding," where charges of both civil and criminal contempt [fol. 324] are tried in a common hearing. Although the

defendants did not specifically object to the dual aspects of the trial below, they did make known their desire to have an opportunity to introduce evidence on the question of intent to commit a criminal contempt. From our examination of the record, it appears that the defendants were exposed to criminal punishment without being afforded the opportunity to present evidence in their defense, if any, and in extenuation of the offenses charged and in mitigation of the penalties to be imposed. The trial court's refusal to hear any evidence, except for the limited purpose of pinpointing the areas of possible federal incrimination, denied the defendants the safeguards to which they were entitled as persons charged with criminal offenses. See *Cooke* v. *United States*, 267 U.S. 517, 537, 69 L.ed. 767, 774 (1924); *N.J. Dept. of Health* v. *Roselle*, *supra*, at 338-340.

For the reasons expressed above, the judgments of the Law Division insofar as they hold the defendants guilty of criminal contempt are reversed and the matters are remanded to the Law Division for new trials. The judgments of the Law Division are affirmed insofar as they order the defendants to be incarcerated until they make "responsive answers to the aforesaid questions [set out in the judgments] before the members of the Waterfront Commission of New York Harbor, or their designees . . . , as well as until such fine[s]" ($50.00 each) have been paid.

[fol. 325]

IN THE SUPREME COURT OF NEW JERSEY

Appeal Docket No. 3930

Civil Action on Appeal

In the Matter of the Application of the Waterfront Commission of New York Harbor, to punish John Moody, Sr. for failure to obey a Subpoena.

In the Matter of the Application of the Waterfront Commission of New York Harbor, to punish William Murphy for failure to obey a Subpoena.

MANDATE ON MODIFICATION—March 4, 1963

This cause having been duly argued before this Court by Mr. Harold Krieger, counsel for the appellants and Mr. Robert A. Pin and Mr. Irving Malchman, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgments of the said Superior Court—Law Division be and the same hereby are modified; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court—Law Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

Witness the Honorable Joseph Weintraub, Chief Justice, at Trenton on the fourth day of March, 1963.

John H. Gildea, Clerk of the Supreme Court.

[File endorsement omitted]

[fol. 326] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 327]

SUPREME COURT OF THE UNITED STATES

No. 138, October Term, 1963

WILLIAM MURPHY and JOHN MOODY, SR., Petitioners,

vs.

THE WATERFRONT COMMISSION OF NEW YORK HARBOR.

ORDER ALLOWING CERTIORARI—October 14, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of New Jersey is granted, and the case is set for oral argument immediately following No. 110. This case and case No. 110 are both placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 328]

SUPREME COURT OF THE UNITED STATES

No. 138, October Term, 1963

WILLIAM MURPHY and JOHN MOODY, SR., Petitioners,

vs.

THE WATERFRONT COMMISSION OF NEW YORK HARBOR.

ORDER—December 9, 1963

On Consideration of the motion of the respondent to require certification of additional parts of the record,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.